

**LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION**

VOLUME VI

LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By
THE RIGHT HONOURABLE THE
LORD MACMILLAN
A LORD OF APPEAL IN ORDINARY
AND OTHER ~~LAWYERS~~

VOLUME VI
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to
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PERSONS AS TO**

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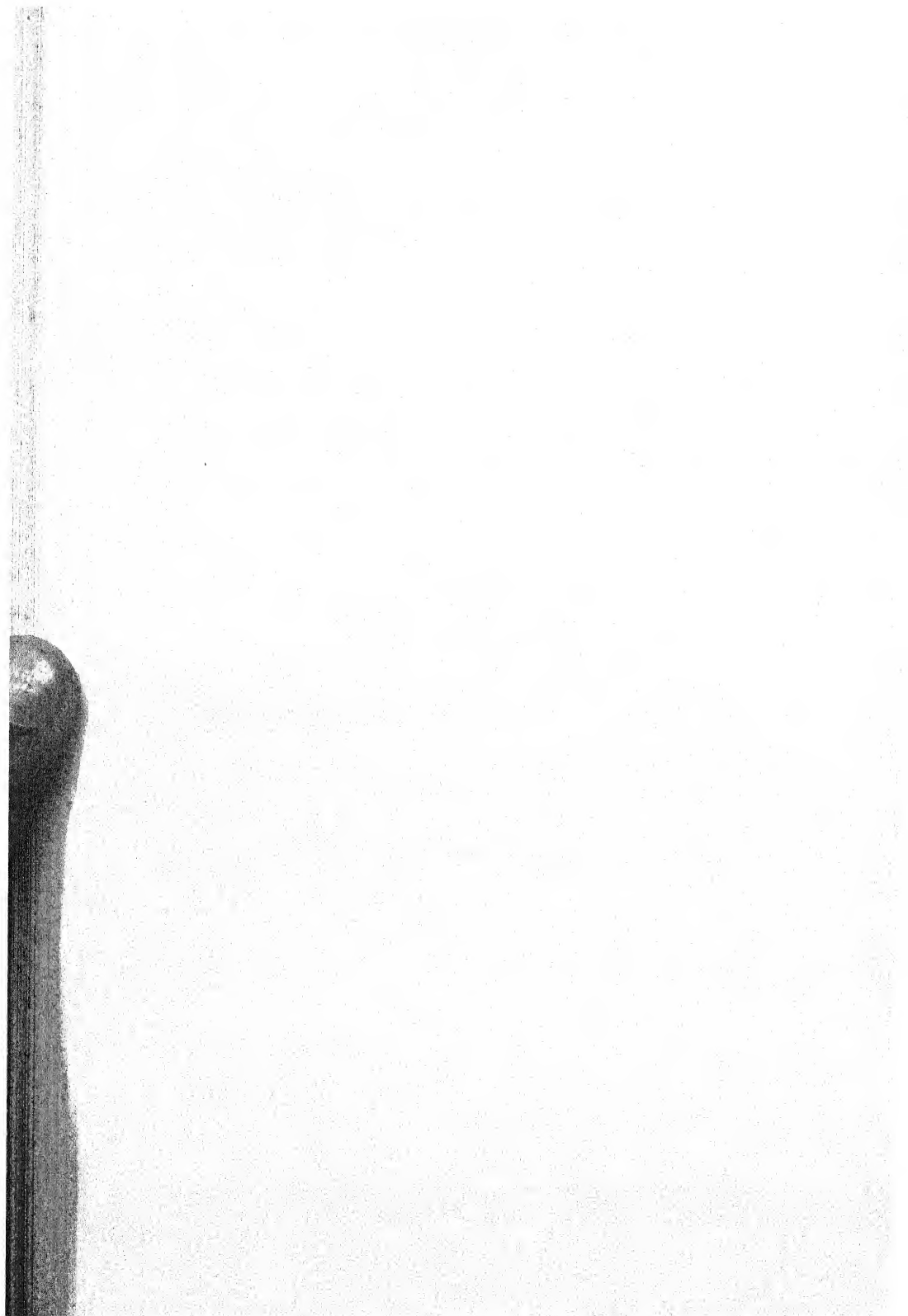
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FERTILISERS AND FEEDING STUFFS

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See also titles : AGRICULTURAL COMMITTEES ;
 AGRICULTURE ;
 AGRICULTURE AND FISHERIES, MINISTRY OF ;
 ANALYST.

Introductory.—The law relating to this subject is to be found in the Fertilisers and Feeding Stuffs Act, 1926 (*a*), and in the Fertilisers and Feeding Stuffs Regulations, 1932 (*b*) ; in this title references to sections are intended as references to the Act of 1926 (unless otherwise stated), and references to regulations as references to the Regulations of 1932.

The primary purpose of the Act of 1926 is to give buyers of fertilisers and feeding stuffs definite information as to the manurial or feeding value of the principal commodities coming within the scope of the Act, and, by a system of warranties, to assist the buyer in recovering compensation or damages in respect of consignments not reaching the standards stated by the seller. The administrative and criminal provisions of the Act are almost wholly ancillary to the foregoing primary purpose. The Act does not apply to sales in exercise of a statutory power to enforce a right or to satisfy a claim or lien, or to a sale under a writ of execution or warrant or decree of any court or a distress for rent or warrant of distress (*c*). [1]

The Schedules to the Act, which may be varied by regulations made by the Minister of Agriculture and Fisheries under sect. 23, form a vital part of the machinery of the Act (*d*) ; the more important fertilisers and feeding stuffs (or those requiring more stringent regulation) are grouped in the First Schedule (*e*) ; commodities of lesser importance or in respect of which misrepresentation or fraud would be less serious, appear in the Second Schedule. Certain provisions of the Act apply to all fertilisers and feeding stuffs, whether scheduled or not. The remaining three schedules are dealt with, *post*, on pp. 5, 6, 8. [2]

(*a*) 1 Statutes 140 *et seq.*

(*b*) S. R. & O., 1932, No. 653.

(*c*) S. 24 ; 1 Statutes 153.

(*d*) The schedules are printed on pp. 155—163 of 1 Statutes as varied by the Regulations of 1928 ; and the alterations made by the Regulations of 1932 are indicated on pp. 13—17 of Supplement No. 3 (1934).

(*e*) 1 Statutes 155.

The commodities covered by the Act are (1) fertilisers of the soil, which expression does not appear to include washes, spraying materials, insecticides and similar articles, and (2) articles intended for use as food for cattle (f) or poultry. [3]

Central Authority.—The Minister responsible for the administration of the Act is the Minister of Agriculture and Fisheries; he is empowered by sect. 23 (g) to make regulations, jointly with the Board of Agriculture for Scotland (h), generally for carrying the Act into operation and specifically: (i.) for varying the Schedules; (ii.) for prescribing the manner of marking articles required to be marked and the nature of such marks; (iii.) for prescribing limits of variation; (iv.) for prescribing the methods of taking and of dealing with samples; (v.) for prescribing methods of analysis; (vi.) for prescribing the qualifications of agricultural analysts and of their deputies, and the form of certificates of analysis.

Other specific powers of the Minister are the approval under sect. 11 (3) of the Act (i) of the appointments by local authorities of agricultural analysts, inspectors, and official samplers; the giving or withholding of consent to certain prosecutions (*vide* "Legal Proceedings," *infra*); and the appointment, jointly with the Scottish Board of Agriculture (h), of an advisory committee to assist and advise in making regulations (sect. 23 (2)).

By s. 12 (3) (k) the Minister may authorise an inspector to exercise in the area of a council the powers of an inspector of the council, and if, generally or in a particular case, the Minister is of opinion that the council have insufficiently exercised their powers, the inspector appointed by the Minister may submit samples to the agricultural analyst of the council; and any expenses certified by the Minister to have been incurred by such an inspector are recoverable by the Minister from the council in default as a civil debt. [4]

Local Authorities and Officers.—It is the duty of every county council and county borough council under sect. 11 (1) (l) to enforce the Act within their county or county borough, and every such council must appoint an agricultural analyst, and one or more inspectors and official samplers, and the appointments so made must be approved by the Minister. A deputy agricultural analyst may be appointed, and, when acting during the illness, incapacity or absence of the analyst, or during a vacancy in that office, is invested by sect. 11 (2) with all the powers and duties of the analyst. Under sect. 11 (5) councils may concur in making joint appointments of officers and may agree as to the sharing of the expenses of joint appointments, and in practice it is not unusual for a council to appoint the inspectors of neighbouring councils as inspectors so that the same officer may follow up a case involving sampling or investigation in two or more adjacent counties or county boroughs.

(f) "Cattle" means bulls, cows, oxen, heifers, calves, sheep, goats and swine (s. 26); food for horses is not covered by the Act. "Poultry" is not defined but probably includes birds of the species usually kept or bred for edible egg production or for table purposes.

(g) 1 Statutes 152.

(h) Now the Department of Agriculture for Scotland. The Regulations of 1932 were made jointly by this department and the Minister.

(i) 1 Statutes 147.

(k) 1 Statutes 148.

(l) *Ibid.*, 147.

Sect. 11 (5) also provides that the power of concurring as to the joint appointment of officers shall be in addition to the power conferred on councils by the L.G.A., 1888, to appoint joint committees. The reference is to sect. 81 of the Act (*m*), but that section is repealed as to joint committees of councils by the L.G.A., 1933, and replaced by sect. 91 of that Act (*n*). It follows that councils of counties and county boroughs may now combine for all or any of the purposes of the Fertilisers and Feeding Stuffs Act, 1926, and may appoint a joint committee under sect. 91 of the L.G.A., 1933. Sub-sect. (4) of that section does not prevent the application of sect. 91 in this instance, because the latter part of sect. 11 (5) of the Act of 1926 is merely a saving, not an authorisation. [5]

The qualifications to be possessed by the agricultural analyst and deputy analyst, are set out in reg. 13. He must have a competent knowledge of chemistry and chemical analysis and microscopy as applied to fertilisers and feeding stuffs; and that knowledge must be attested by a certificate or diploma given by a competent body.

An inspector must be a whole-time officer of the council, or of one or more of the councils, appointing him (sect. 11 (1)), but he need not give his whole time to duties under the Act. An official sampler must not engage in farming or in any business connected with the manufacture, importation or sale of fertilisers or feeding stuffs (sect. 11 (4)). The same person may hold office as inspector and as official sampler.

A council must make quarterly returns in the form prescribed by the regulations to the M. of A. & F. as to the results of the analyses of samples submitted to the agricultural analyst (sect. 18) (*o*). [6]

A council may contribute towards the expenses incurred by any agricultural body or association in causing samples to be taken by an official sampler, and may fix fees to be payable in respect of taking samples and analysing them at the request of purchasers; fees may be varied according to the quantity of the article to be sampled, and for different analyses of the same article (sect. 17 (1), (2)). In practice many councils prefer to encourage frequent use of the facilities afforded under the Act by charging no fees, or nominal fees only.

Expenditure under the Act is defrayed, in the case of a county council, as expenditure for general county purposes, and in the case of a county borough council out of the general rate fund (*p*).

Matters dealt with in the Act of 1926 stand referred to the agricultural committee where such a committee has been established under the M. of A. & F. Act, 1919, sect. 7 (*q*). [7]

Powers and Duties of Inspectors.—Under sect. 12 (1) (*r*), an inspector may at all reasonable times enter any premises where he has reasonable cause to believe that (1) there is any article included in column 1 of the First Schedule which has been prepared for sale or consignment, or any article included in column 1 of the First or Second Schedule which is stored for use and not for sale or manufacture; or (2) there are any registers or statutory statements kept in pursuance of the Act (sect. 9 (3)) (*s*). In the former case he can take samples either in the

(*m*) 10 Statutes 752.

(*o*) 1 Statutes 150.

(*p*) S. 17 (3) and s. 185 of L.G.A., 1933; 1 Statutes 150; 26 Statutes 407.

(*q*) 3 Statutes 453.

(*s*) *Ibid.*, 146.

(*n*) 26 Statutes 355.

(*r*) 1 Statutes 147.

prescribed manner or otherwise (*t*), and in the latter case he can take copies of the registers and statutory statements. Although the point does not appear to have been expressly decided it would seem that the inspector's power of entry does not enable him to wander at large over a manufacturer's or trader's premises, but that he can only demand to go where he has reasonable ground for thinking there are articles coming within the defined categories and prepared for sale or consignment, *i.e.* articles in the finished state and not requiring any further process of manufacture or mixing or refining. This point is important where secret processes are employed in manufacture, though further protection is given by sect. 16 (*u*) which prohibits the disclosure by an inspector of any information obtained by him in or in connection with the exercise of his powers, except to persons acting in the execution of the Act and so far as may be necessary for its execution. The penalty for wrongful disclosure is a fine not exceeding £50 on summary conviction (*a*). [8]

An inspector's powers of entry for sampling purposes are limited by the proviso to sect. 12 (1) (*b*) to premises within the county or county borough for which he is appointed, except with the consent of the council, or of an authorised officer of the council, in whose area the premises are situate. This limitation is not included in sect. 9 (*c*), which allows an inspector to enter and inspect registers and statutory statements; nevertheless, it is doubtful whether its omission implies that for that purpose an inspector can enter premises in an area other than that for which he is appointed. In this connection it should be noted that an inspector appointed by the Minister can only enter and take samples if specially authorised in that behalf (sect. 12 (3)), but in view of the definition of "inspector" in sect. 26 (*d*), an inspector appointed by the Minister can enter and inspect registers and statutory statements in any district without special authority.

If an inspector desires to take a sample of a parcel weighing 14 lb. or less, and exposed for sale by retail, the retailer may require the inspector to purchase the entire parcel (sect. 12 (4)) (*e*). Apart from this section, the Act does not require local authorities to pay for samples taken by inspectors.

When entering or inspecting articles on railway premises, an inspector must conform to the reasonable requirements of the railway company, so as to prevent interference with or obstruction of traffic (sect. 12 (5)).

[9]

Civil Liabilities.—Sects. 1 to 3 of the Act, dealing with civil liabilities, afford that protection to purchasers which is the principal object of the statute. By sect. 1 (*f*), the seller of any fertiliser or feeding stuff

(*t*) If an inspector takes a sample otherwise than in the prescribed manner, he must not communicate to any person the name of the seller, purchaser or owner of the article sampled (s. 12 (2)). *Semble*, this precludes him from communicating the name to a member or officer of the local authority. Such samples are noted in the return to the Minister as "Informal."

(*u*) 1 Statutes 150.

(*a*) *Semble*, the burden of justifying a disclosure duly proved is on the defendant (*vide* Summary Jurisdiction Act, 1848, s. 14; 11 Statutes 280).

(*b*) 1 Statutes 147.

(*c*) *Ibid.*, 146.

(*d*) The expression "inspector" includes an inspector appointed by the Minister or an inspector appointed by the council of a county or county borough (s. 26 (1); 1 Statutes 154).

(*e*) 1 Statutes 148.

(*f*) *Ibid.*, 141.

included in column 1 of the First and Second Schedules is required to give to the purchaser a statutory statement containing: (1) the name under which the article is sold; (2) such particulars of the nature, substance or quality of the article as are mentioned in column 2 of the Schedule; and (3) where a feeding stuff contains any ingredient included in the Third Schedule (*g*), the name of such ingredient.

For example, on a sale of rice meal, the statutory statement would disclose the name "rice meal," and the amounts of oil, albuminoids (protein) and fibre, and, if additional rice-husks had been mixed in the meal, the presence thereof would be declared. Amounts must be stated as a definite percentage of the weight of the article (reg. 15), but this declaration is subject to the limits of variation (reg. 2). Even if the article is sold under a "fancy" or trade name, the statutory statement must be given, provided the article is in fact one of those named in either the First or Second Schedule to the Act (*h*).

A statutory statement is not required when (i.) two or more articles are mixed at the request of the purchaser before delivery to him; or (ii.) the sale is in a quantity of 56 lbs. or less, taken, in the presence of the purchaser, from a parcel bearing a label giving the required particulars in the manner prescribed by the regulations.

Failure to give the statutory statement does not invalidate the contract of sale (sect. 1 (2)).

Sect. 2 (1) (*i*) provides that a statutory statement shall serve as a warranty by the seller that the particulars therein are correct. A seller cannot contract out of this warranty.

A further warranty is implied, on the sale of a feeding stuff (for use as food for cattle or poultry) included in the First or Second Schedule, that the article is suitable for use as such, and, except as expressly stated, contains no ingredient included in the Third Schedule (sect. 2 (2)). The seller cannot contract out of this warranty.

Sect. 2 (2) of the Act is not restricted to cases in which a purchaser of cattle food uses it as food for cattle, but applies also where the purchaser resells the food (*k*). In the case in question, the original vendors sold in their own names, but were acting as brokers for a banking company, and it was decided (*l*) that the sale was not a sale "in exercise of a statutory power to enforce a right or to satisfy a claim or lien," so as to be exempt from the Act under sect. 24 (*m*). The damages awarded to the plaintiffs could cover damages paid by them to persons who had bought the food from the plaintiffs. [10]

If a fertiliser or feeding stuff is sold under a name specified in column 1 of the Fourth Schedule, a warranty is implied that the article accords with the definition contained in that Schedule (sect. 2 (3)) (*n*).

Any statement as to the amount of chemical or other ingredients

(*g*) The Third Schedule comprises a list of ingredients of low nutritive value, such as husks, peat, straw, and sawdust; husks, etc., need only be declared when used as separate ingredients or artificial mixtures in the manufacture of feeding stuffs. The schedule contains an exception in favour of husks, etc., naturally present with the seeds used in a feeding stuff.

(*h*) It should be noted that under the last part of s. 23 (1); 1 Statutes 152, where a schedule has been varied by regulations the Act has effect subject to the variation.

(*i*) 1 Statutes 141.

(*k*) *Dobell & Co., Ltd. v. Barber and Garratt*, [1931] 1 K. B. 219; Digest (Supp.).

(*l*) GREER, L.J., dissenting.

(*m*) 1 Statutes 153.

(*n*) *Ibid.*, 142.

or as to the fineness of grinding of a fertiliser, or as to the amount of the nutritive or other ingredients of a feeding stuff, made in any written document (other than a statutory statement) has effect as a warranty that the facts stated are correct (sect. 2 (4)). This warranty applies to any fertiliser or feeding stuff, whether or not scheduled.

No action lies on a misstatement in any of the foregoing warranties if the error does not exceed the limits of variation prescribed by reg. 2, but if those limits are exceeded the purchaser can claim in respect of the entire deficiency or excess, and not merely in respect of so much of the deficiency or excess as is outside the limits (sect. 2 (5)).

Sect. 3 (o) provides the machinery whereby the purchaser can obtain the technical evidence necessary to enable him to enforce the warranties already mentioned, or any express or implied warranty in relation to a fertiliser or feeding stuff not included in the First or Second Schedule.

The purchaser on payment of the fee (if any) fixed by the local authority (p), is entitled to have a sample of the fertiliser or feeding stuff taken by the official sampler, and to have it analysed by the agricultural analyst, whose certificate is to be furnished to the purchaser. The purchaser must, if so requested, give the official sampler the statutory statement or warranty, or a copy of it. The sample must be taken in the manner prescribed by the regulations (q), and must not be taken after the expiration of fourteen days from the delivery to the purchaser of the article sampled, or the receipt by the purchaser of the statutory statement or warranty, whichever is the later. Delivery does not take place until the article arrives at the place to which it is consigned, whether the consignment is by direction of the seller or the purchaser (sect. 26 (2)) (r). [11]

Criminal Liabilities.—In order to enable the inspectors to check the accuracy of statutory statements, sect. 4 (s) requires that every parcel of a fertiliser or feeding stuff named in column 1 of the First Schedule shall be marked in manner prescribed by the regulations (t) so as to state or indicate the particulars required to be given in the statutory statement. Although statutory statements must be given in respect of articles included in the First and Second Schedules, it will be seen that marking is necessary only in the case of articles entered in the First Schedule. Marking must take place, when the article has been prepared for sale or consignment, on exposure for sale; or if the parcel is not exposed for sale, then the mark must be applied before it leaves the premises where it is prepared for sale or consignment. The dealer may keep a register of marks in the prescribed form (u) in which the meaning of each mark is set out, so as to avoid the necessity for showing the detailed particulars on each parcel. On the sale of a parcel marked in such a way as to necessitate reference to a register of marks, the mark must be added to the statutory statement. In the case of a middleman who deals in parcels which do not come on to his premises, the middleman must add to the statutory statement, given by him to his customer, the mark contained in the statutory statement given to

(o) 1 Statutes 142.

(p) See s. 17 (2) (1 Statutes 150), and p. 3, *ante*.

(q) See reg. 3, and "Provisions as to Sampling and Analysis," *infra*.

(r) 1 Statutes 154.

(s) *Ibid.*, 143.

(t) See reg. 4.

(u) S. 4 (2). See reg. 5 which indicates what the register should contain, but does not prescribe the form of it.

the middleman by the vendor to him, this being the mark which should appear on the parcel ; by this means the true origin of a parcel may be traced, and the results of an analysis of a sample therefrom can be compared with the register of the original vendor. [12]

Sect. 4 (3) (a) provides that if a parcel required under the section to be marked is not so marked, the seller or the person having it in his possession or disposition for sale or consignment, or for exposure for sale, is guilty of an offence against the Act (b). If from the analysis of a sample of the parcel taken in the prescribed manner by an inspector it appears that the particulars actually marked on the parcel or indicated thereon by the statutory mark are false to the prejudice of the purchaser, or are incomplete, the seller or person as aforesaid is guilty of an offence ; but a sample intended to serve as the basis of a prosecution in respect of false or incomplete particulars must be taken on the premises on which the parcel is exposed for sale, or on any premises on which the marked parcel happens to be before delivery to a purchaser or carrying agent (*ibid.*). The inclusion in sect. 4 (3) of the words "or carrying agent" excludes (except where the seller delivers the parcel in his own vehicle or by his own servant) the provision in sect. 26 (2) that an article consigned to a purchaser is not deemed to be delivered until it arrives at the place to which it is consigned, and therefore where parcels are delivered to a railway company or carrier, and are re-consigned by a middleman in the same or smaller lots without leaving the possession of the carrying agent, no sample taken after the parcels have left the premises of the original consignor will serve as a basis for proceedings under sect. 4 (3) against either the original seller or against the middleman (c). The results of the analysis of samples taken by official samplers cannot be used as the basis of criminal proceedings, but in practice information obtained by taking official samples in the prescribed manner under sect. 3 may well indicate to the inspector the desirability of taking samples at the premises of the original seller under sect. 4.

Special provisions dealing with parcels consigned ex ship or quay are contained in sect. 5 (d), which again applies only to articles named in column 1 of the First Schedule. On such consignments, it is unlikely that the seller will have in his possession, when consigning the parcels, all the information necessary to enable him to complete a statutory statement, and he must therefore as soon as practicable enter in a register (e) kept by him the following particulars : (i.) the date of delivery of consignment to the purchaser, the place of delivery to the purchaser, or other destination, and the quantity delivered or consigned ; (ii.) any shipping or other mark on the article ; (iii.) the particulars required to be contained in the statutory statement. [13]

The seller of an article ex ship or quay is guilty of an offence under sect. 5 (3) of the Act (f) if he fails to enter in his register any statutory particular required by the section other than a particular required to be

(a) 1 Statutes 143.

(b) For table of offences and penalties, see *post*, pp. 12, 13.

(c) See *infra*, as to consignments ex ship or quay.

(d) 1 Statutes 144.

(e) Under s. 5 (2) ; 1 Statutes 144. See also reg. 6. A form of register is not prescribed, but it is to be kept in such form that an inspector may readily ascertain the particulars required.

(f) 1 Statutes 144.

contained in a statutory statement, or if any entry under heads (i.) and (ii.) above is false in any material particular, or if from the analysis of a sample taken in the prescribed manner it appears that any particulars required to be entered in the register under head (iii.) above are false to the prejudice of the purchaser, or are omitted. A sample intended to be used as the basis of a prosecution under sect. 5 (3) must be taken either on the quay, or at the time of delivery to the purchaser (g), or during transit to the purchaser. There is no provision for sampling on board ship, unless the transit to the purchaser has begun. Where, as frequently happens, the importer sells to a merchant who takes delivery into lighters alongside the ship, and parcels are consigned and reconsigned in the hands of carrying agents until the ultimate delivery to the consumer, it is difficult to secure a sample on which criminal proceedings under sect. 5 (3) can be taken.

Sales in small quantities (h) from parcels labelled with the particulars required by sect. 1 can be checked by inspector's samples taken on the premises where the parcel is kept; if the analysis of the sample shows that the particulars are false to the prejudice of the purchaser, or that statutory particulars are omitted, the owner or seller is guilty of an offence under sect. 6 (i). This provision applies to articles in respect of which statutory statements must be given, *i.e.* articles included in column 1 of the First and Second Schedules. [14]

Any person who sells or offers or exposes for sale, or has in his possession packed or prepared for sale, any feeding stuff containing an ingredient deleterious to cattle or poultry, is guilty of an offence under sect. 7 unless he proves (k), firstly, that he did not know and could not with reasonable care have known that the article contained a deleterious ingredient, and, secondly, where he obtained the article from another person, that he gave, on demand, to the prosecutor all information in his power. Proceedings under this section (sect. 7) can only be taken when an inspector has taken a sample in the prescribed manner on the premises on which the article was sold or exposed or offered for sale, or on which it was when prepared for sale or consignment. This section applies to any feeding stuff for cattle or poultry, and is not restricted to the scheduled articles. Any substance mentioned in the Fifth Schedule (l), if present in a feeding stuff in excess of the maximum quantity (if any) set out in the Schedule, is deemed to be deleterious until the contrary is proved.

Sects. 8 and 9 (m) deal with the enforcement of the requirements of the Act as to statutory statements and registers. A failure to give a statutory statement in the prescribed form (if any) when required so to do by the Act is an offence (n); this may apply to statements given in respect of articles included in either the First or the Second Schedule. The following offences (n) relate only to articles included in the First Schedule: the giving of a statutory statement in which (1) the particulars differ from the particulars indicated by a mark

(g) *I.e.* at the place to which it is consigned (s. 26 (2)); the "purchaser" for this purpose appears to be the first purchaser from the importer.

(h) Sales in quantities of 56 lbs. or less (s. 1 (1) (ii)).

(i) 1 Statutes 144.

(k) The onus of proof is on the defendant.

(l) 1 Statutes 163. These include salts soluble in water, poisonous substances (except those naturally present) and sand and insoluble minerals.

(m) 1 Statutes 145, 146.

(n) For penalties, see Table of Offences and Penalties, *post*, pp. 12, 13.

affixed in accordance with the Act; or (2) in the case of an article ex ship or quay, the particulars in the statutory statement differ from the statutory particulars in the seller's register; or (3) in the case of an article which has not been on the seller's premises (o), the particulars in the statutory statement given by the seller differ from the particulars contained in the statutory statement given to the seller.

In any of the three foregoing cases the defendant can avoid conviction by proving that he took all reasonable steps to avoid committing the offence, and that he acted without intent to defraud.

Failure to add to a statutory statement any mark required by the Act is an offence (p). [15]

By sect. 9 any person who is under a duty to keep a register or who receives a statutory statement relating to an article sold by him, but which has never been on his premises, must keep the register or statement for the prescribed period (not exceeding four months); the prescribed period is in fact four months (reg. 8). Such documents must be produced to an inspector on demand at any time during the four months and failure to preserve them for that period is an offence. Further any person having in his possession or under his control any register or statutory statement must produce it at any time on demand by an inspector (sect. 9 (2)). This duty attaches to consuming purchasers in possession of statutory statements, but they are under no obligation to preserve the documents; failure to produce a register or statutory statement under this sub-sect. is an offence.

Any person who fraudulently tampers with any article so as to procure that a sample of it taken or submitted for analysis does not correctly represent the article, or who fraudulently tampers or interferes with any sample taken or submitted for analysis is guilty of an offence under sect. 14 (g). This section applies to any fertiliser or feeding stuff which is within the scope of the Act, whether or not scheduled, and applies to official samplers' samples as well as to formal and informal samples taken by inspectors.

By sect. 15, if the owner or person having the charge or custody of any fertiliser or feeding stuff refuses to allow an inspector to take a sample on any premises on which he is entitled to take a sample under the Act, or if any person wilfully delays or obstructs an inspector in the execution of his statutory duties, that owner or person is guilty of an offence. An inspector must, however, if required, produce evidence of his appointment or authority. [16]

Provisions as to Sampling and Analysis.—The method of taking samples by official samplers and of taking formal samples by inspectors is set out in the regulations (r); as either civil claims or criminal proceedings may depend on the result of an analysis of a sample, the prescribed methods must be followed strictly, and in practice it is desirable that informal samples should be taken by methods closely approximating to the prescribed methods in order that comparable and useful results may be obtained.

By sect. 13 (s) a sample taken in the prescribed manner must be

(o) *Semble*, "seller's premises" includes premises under the control of the seller, but not the premises of a railway company or carrying agent.

(p) For penalties, see Table of Offences and Penalties, *post*, pp. 12, 13.

(g) 1 Statutes 149.

(r) See reg. 3; an inspector can take informal samples not in the prescribed manner but subject to the restrictions in s. 12 (2) of the Act.

(s) 1 Statutes 148.

divided, by the official sampler or inspector, into three parts, and each part must be marked, sealed, and fastened up; the method of division and the nature of the containers to be used are laid down in reg. 3. Two parts are to be sent to the agricultural analyst accompanied by a signed statement that the sample was taken in the prescribed manner; in the case of a sample taken by an official sampler, the third part of the sample must be delivered or sent by registered post to the last seller or his agent, and in the case of a sample taken by an inspector, the third part must be delivered or sent by registered post to the person (or his representative) who would be liable to prosecution in the event of an offence being disclosed by the analysis (*t*). [17]

The agricultural analyst analyses one part of the sample, using the prescribed methods (if any) (*u*), and retains the second part for six months from the date of his certificate (*x*), unless in the meantime the retained part has been sent to the Government chemist, to whom under sect. 13 (3) an appeal lies at the instance of the person by or on whose behalf the sample was submitted, or of the owner or seller of the article. A sample sent to the agricultural analyst or to the Government chemist must be accompanied by the original or a copy of any statutory statement or warranty relating to the article, or a copy of the particulars marked on or applicable to the article (*a*). The agricultural analyst is to send copies of his certificate of analysis of a formal sample to the person who submitted the sample (*i.e.* the inspector or official sampler) and to the purchaser (*b*), and to the owner or the seller; if the analyst does not know the name and address of the owner or seller the certificate intended for that person is sent to the person who submitted the sample, who must forward it to the owner or seller (sect. 13 (6)). The certificate in respect of an informal sample is sent only to the person who submitted the sample (sect. 13 (2)). [18]

Legal Proceedings.—Fines for offences under the Act are recoverable summarily, and prosecutions may be instituted under sect. 21 (1) (*c*), if the prosecutor so desires, in the place where the person charged resides or carries on business; but this does not preclude the institution of proceedings in the place where the offence charged is alleged to have been committed. In a prosecution under the Act, it is no defence to allege that, a sample having been taken for analysis only, the purchaser was not prejudiced (*d*).

In certain cases a prosecution can only be instituted with the consent of the Minister of Agriculture (*e*), but subject thereto a prosecution may be commenced by the person aggrieved, or by the council of a county or county borough, or, with the consent of such council, by an inspector appointed by the council (sect. 21 (3)). Where a sample has been taken by an inspector appointed by the Minister, the Minister may under the same sub-sect. institute proceedings. The sub-sect. also contemplated that in the case of a prosecution by an inspector of a local authority, the inspector should obtain the consent of the council

(*t*) S. 13 (1) and reg. 7.

(*u*) Ss. 13 (2), 23 (1) (*e*) and regs. 11, 12.

(*x*) Reg. 9.

(*a*) S. 13 (4); 1 Statutes 149.

(*b*) In some cases the inspector is also "the purchaser."

(*c*) 1 Statutes 152.

(*d*) S. 21 (2). Cf. Food and Drugs (Adulteration) Act, 1928, s. 2 (3); 8 Statutes 886.

(*e*) S. 20; 1 Statutes 151.

in each individual case, and should prove the consent in respect of each information. But sect. 277 of the L.G.A., 1933 (f), now allows a county or county borough council by resolution to authorise any officer, either generally or in respect of any particular matter, to institute on their behalf proceedings before any court of summary jurisdiction, or to appear on their behalf before any such court in proceedings instituted by them or on their behalf. Any officer so authorised may conduct the proceedings although he is not a certificated solicitor. If advantage be taken of this enactment, it would appear that a general authorisation would be a sufficient consent for the purpose of sect. 21 (3) of the Act of 1926. In every case the prosecutor should prove his authority by production of a signed minute in accordance with the L.G.A., 1933, Sched. III., Part V., para. 3; where authority is given by a committee, the committee is deemed, until the contrary is proved, to have had power to deal with the matter referred to in the minute (*ibid.*, para. 3 (2)). [19]

Sect. 20 (g) contains various safeguards in favour of persons liable to prosecution under the Act; in no case, where a special penalty is not provided, can proceedings be commenced without the consent of the Minister of Agriculture, and in cases of this class involving the analysis of a sample the consent of the Minister may not be given until the part of the sample retained by the agricultural analyst has been analysed by the Government chemist (sect. 20 (1)). In a prosecution for causing or permitting any name, mark or particulars to be false, or for making a false entry in a register, or for failing to declare the presence in a feeding stuff of an ingredient included in the Third Schedule the defendant is entitled to be discharged if he proves: (1) that, having taken all reasonable precautions against committing an offence, he had no reason to suspect the correctness of the mark or entry or the presence of the ingredient in question; and (2) that where he obtained the article from another person, he gave the prosecutor, on demand, all information in his power with respect to the person from whom he obtained the article, and as to the statutory statement given to him, and as to any mark on the article when he obtained it (sect. 20 (2)).

By sect. 20 (3) it is provided that a prosecution in respect of causing or permitting any name, mark, or particulars to be false, or in respect of the presence of any ingredient included in the Third Schedule or any deleterious ingredients, shall not be instituted after the expiration of three months from the date on which a sample of the article was taken in the prescribed manner (h). [20]

In any prosecution of a kind covered by sect. 20, it is submitted that sub-sect. (4) should be complied with (i), and that the summons should contain particulars of the offence and the name of the prosecutor, and should not be made returnable less than fourteen days from the date of service, and a copy of any certificate of the agricultural analyst obtained for the prosecutor should be served with it (s. 20 (4)).

By sect. 10 (k) partial relief is afforded from the operation of the

(f) 26 Statutes 452.

(g) 1 Statutes 151.

(h) In other cases the usual time limit under the Summary Jurisdiction Acts, of six months from the date of the offence, applies.

(i) This point is somewhat obscure; the whole of s. 20 deals with prosecutions, but in sub-ss. (1) and (2) the phrase "proceedings under this Act" is used and the word "prosecution" appears only in sub-ss. (3) and (4). It is submitted that the safer course is to assume that sub-s. (4) governs all prosecutions referred to in s. 20, whether under the term "prosecutions" or "proceedings under this Act."

(k) 1 Statutes 146.

Merchandise Marks Act, 1887 (*l*). The section provides that where in pursuance of the provisions of sects. 1 to 9 of the Act of 1926, a description has been applied to any article included in column 1 of the First Schedule, and such description is a trade description within the meaning of the Act of 1887, no proceedings shall be taken under that Act on the ground that the description so applied is a false trade description.

Sect. 22 (*m*) provides that in the case of a formal sample taken and dealt with in accordance with the Act, the agricultural analyst's certificate shall, in any civil or criminal proceedings with respect to the article sampled, be sufficient evidence of the facts therein stated, unless the defendant or person charged requires that the person who made the analysis be called as a witness, or that the sample be further analysed by the Government chemist. The certificate of the Government chemist is sufficient evidence of the facts stated therein, unless either party to the proceedings requires that the person who made the analysis be called as a witness (*ibid.*). [21]

TABLE OF OFFENCES AND PENALTIES

A. PROSECUTIONS IN RESPECT OF WHICH CONSENT OF THE MINISTER IS REQUIRED AND ANALYSIS IS REQUIRED

Sect.	Nature of Offence.	Maximum Penalty.
4 (3)	Omission from mark on parcel of any particulars required in statutory statement, or false mark on parcel	£20 for first offence. £50 for subsequent offence.
5 (3) (c)	Omission from register or false entry in register (consignment ex ship or quay) of particulars required in statutory statement	do.
6	Omission of particulars from, or false particulars in, label, in case of sales in small quantities	do.
7 (1)	Selling, etc., food for cattle or poultry containing a deleterious ingredient	do.

B. PROSECUTIONS IN RESPECT OF WHICH CONSENT OF THE MINISTER IS REQUIRED BUT ANALYSIS IS NOT REQUIRED

Sect.	Nature of Offence.	Maximum Penalty.
4 (3)	Failure to mark parcel	£20 for first offence. £50 for subsequent offence.
5 (3) (a) and (b)	Omission from register or false entry in register (consignment ex ship or quay) of particulars other than those required in statutory statement	do.
8 (2)	Giving statutory statement containing particulars differing from those marked, or from register, or from statutory statement of previous seller	do.

C. PROSECUTIONS IN RESPECT OF WHICH CONSENT OF THE MINISTER IS NOT REQUIRED AND ANALYSIS IS NOT REQUIRED

Sect.	Nature of Offence.	Maximum Penalty.
8 (1)	Failure to give statutory statement	£5 for first offence.
8 (3)	Failure to add mark to statutory statement	£10 for subsequent offence. do.
9 (1) and (2)	Failure to preserve or produce statutory statement or register	£20.
14 (a) and (b)	Tampering with article or sample	£50 or six months' imprisonment.
15	Obstruction of inspector	£20
16	Improper disclosure of information by inspector	£50.

[21A]

London.—The Fertilisers and Feeding Stuffs Act, 1926, applies to London, but sect. 27 (*n*) provides that the sanitary authority of the Port of London as regards the district of that authority and the corporation of the City of London as regards the City, shall perform the duties of the Act to the exclusion of any other council, their expenditure being defrayed out of the general rate of the City of London. The London County Council are the authority for the remainder of London. [22]

(n) 1 Statutes 154.

FIDELITY POLICIES

See GUARANTEES OF OFFICERS.

FILLING STATIONS

See PETROL FILLING STATIONS.

FINANCE

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NOTE ON CLASSIFICATION OF FINANCIAL ARTICLES

Finance is an integral and vital part of local government administration, and in view of its various ramifications some indication is necessary of the plan on which financial titles in this work have been selected, and their relation to the subject of financial administration as a whole.

Most of the financial articles will be self-evident in the General Index, and the system of cross-titles and sub-divisions will provide most of the references required. The following classification of titles is therefore not intended to be exhaustive. It is based upon the principal means by which the expenditure of local authorities may be financed, which are indicated in the following article, but Accounts and Audit, Financial Organisation and Policy, and a Miscellaneous group are also included.

Articles dealing with the administration of various local services will, as a rule, as part of the treatment of the law governing the services, include any specific statutory provisions regulating finance (*e.g.* ALLOTMENTS, ART GALLERIES, BATHS AND WASHHOUSES, etc.); where these provisions are numerous, and varied, they may form the subject of a separate title (*e.g.* EDUCATION FINANCE).

The title standing first in the list of titles in each of the following five groups treats generally of the subject-matter of the titles in that group.

I. Accounts and Audit. *General article* : Accounts of Local Authorities.

Articles dealing with accounts of specific authorities : (1) Borough Accounts, (2) County Accounts, (3) Parish Accounts, (4) Rural District Council Accounts, (5) Urban District Council Accounts.

Miscellaneous articles : (1) Audit, (2) Auditors, (3) Costing, (4) Financial Statement, (5) General Rate Fund, (6) Rate Accounts, (7) Reports and Returns, (8) Surcharge.

II. Rates. *General article* : Rates and Rating.

Special articles : (1) Derating, (2) Differential Rating, (3) Discount for Rates (see also V., *infra*), (4) General Rate Fund (see also I., *supra*), (5) London, Rating in, (6) Penny Rate, (7) Precepts, (8) Rate Accounts, (9) Rating of Special Properties, (10) Special Rates.

III. Loans and Borrowing. *General article* : Borrowing.

Articles dealing with various methods of borrowing : (1) Bankers' and other Overdrafts, (2) Bills, Borrowing by, (3) Bonds, (4) Housing Bonds, (5) Local Loans, (6) Mortgages, (7) Municipal Banks, (8) Public Works Loans Acts, (9) Stock.

Miscellaneous articles : (1) Consolidated Loans Fund, (2) Redemption of Capital Expenditure.

IV. Government Grants and Subsidies. *General article* : Grants.

Articles dealing with grants in aid of specific services : (1) Education Finance, (2) Housing Subsidies, (3) Penny Rate (see also II., *supra* ; This is a factor in the determination of certain grants, e.g. Education and Housing), (4) Police, (5) Road Grants, (6) Unemployment Relief Works.

Miscellaneous articles : (1) General Exchequer Grants, (2) Local Taxation Licences.

V. Income and Expenditure, Financial Policy and Administration, Organisation and Officers and Miscellaneous. *General article* : Finance.

Articles dealing with income and expenditure : (1) Accounts (see also I., *supra*), (2) Contributions, (3) Corporate Lands, (4) Income Tax, (5) Interest, (6) Municipal Undertakings (see also Electricity Supply, Gas, Water Supply, etc.), (7) Private Improvement Expenses, (8) Trading Revenue and Finance.

Articles dealing with policy and control : (1) Budgetary Control, (2) Capital Expenditure out of Income, (3) Discount for Rates (see also II., *supra*), (4) Reports and Returns, (5) Treasury.

Articles dealing with organisation and officers : (1) Chamberlain, (2) Finance Committee, (3) Finance Department, (4) Financial Officer, (5) Treasurer.

Miscellaneous articles : (1) Advances by Local Authorities, (2) Compensation for Loss of Office, (3) Financial Adjustments, (4) Insurance, (5) Insurance Funds of Local Authorities, (6) Small Dwellings, (7) Superannuation. [23]

INTRODUCTORY

The term finance may be defined as the science of the profitable management of money and of monetary affairs, or as the systematic control of income and expenditure. In local government circles it is usually considered to mean the provision made by a council to meet expenditure as it falls due for payment, but in this article finance in the wider sense will be dealt with.

Local authorities are not required to limit expenditure in accordance with their income, but have the right to raise a rate to meet any deficit which has been incurred, or is estimated to be incurred (a). The inevitability of having to meet a deficiency results, in modern administration, in the rate levy being regarded as part of the income of the authority.

The comparatively unlimited revenue available to them as a result of the power to levy rates has led to councils paying greater regard to the expenditure, than to the income, side of their accounts, and it can be readily appreciated that the soundness of this course is at least

(a) See ss. 133 (1), 186, 189, 192 (1) of L.G.A., 1933 ; 26 Statutes 406—410.

doubtful, even though the trend of requirements by a modern community tends to make it almost inevitable. At the same time, the prevailing practice, and particularly that whereby the ultimate financial effect of a given policy is ignored, or only lightly considered, results in those periodic cycles of reaction in which the demand for economy prevails over all but the most urgent items of expenditure. [24]

ANNUAL EXPENDITURE OF LOCAL AUTHORITIES

To obtain a proper appreciation of the importance of finance in the affairs of local authorities, it is desirable to look at the total expenditure incurred by them. The following figures have been compiled from the annual Local Taxation Returns for England and Wales for 1931-32. They show the total expenditure of all local authorities in England and Wales for the financial year 1931-32, and give a clear indication of the vast amounts involved.

Items.	Rate Fund Services.	Trading Services and Corporation Estates.	Special Funds such as Sinking Funds, Reserve Funds, etc.	Total.
I. Revenue Account :	£	£	£	£
1. Total expenditure -	324,923,985	116,454,171	29,806,345	471,184,501
2. Deduct transfers -		4,755,726	31,410,222	36,165,948
3. Net expenditure— Revenue % -	324,923,985	111,698,445	Cr. 1,603,877	485,018,553
II. Capital Account :				
4. Total expenditure -	94,715,024	28,473,663		123,188,687
5. Deduct — Expendi- ture met out of transfers from revenue and other %s - - -	4,534,086	1,878,883		6,412,969
6. Net expenditure— Capital % - -	90,180,938	26,594,780		116,775,718

This large amount of expenditure is met from a variety of sources, and the following Tables taken from the same Returns give an indication as to the sources from which the income to meet this heavy expenditure was received.

RATE FUND SERVICES

England and Wales

Revenue Account Income

£

Public rates, including contributions in lieu of rates on property occupied by or on behalf of the Crown for public purposes - - - - -	148,279,542
Transfers in aid of Rates :	
(a) From trading accounts - - - - -	1,639,210
(b) From special funds - - - - -	87,671
Government Grants :	
(a) Grants under sects. 91—100 of the L.G.A., 1929 (b) -	45,050,961
(b) Other Government grants (including grants from the Road Fund) - - - - -	80,973,149
Fees, rents, repayments and other specific income - - -	51,575,437
Total income—Revenue account	327,605,970

<i>Capital Account</i>		England and Wales
<i>Receipts</i>		£
Loans	- - - - -	67,293,812
Government grants (including grants from Road Fund)	-	7,557,490
Sales and other sources (not including transfers from Revenue and other %s)	- - - - -	8,598,336
Total receipts—Capital account		83,440,638

TRADING SERVICES AND CORPORATION ESTATES

<i>Revenue Account</i>		£
<i>Income</i>		
Government grants	- - - - -	525,670
Transfers to meet deficiencies from :		
(a) Rate Fund %s	- - - - -	2,853,829
(b) Reserve and other %s	- - - - -	262,687
Other income	- - - - -	113,067,342
Total income—Revenue account		116,709,528

<i>Capital Account</i>		£
<i>Receipts</i>		
Loans	- - - - -	25,283,990
Government grants	- - - - -	51,766
Sales and other sources (not including transfers from Revenue and other %s)	- - - - -	965,904
		26,301,660

It will be observed that in the official tables, both income and expenditure are divided into capital and revenue. It must not be forgotten that even where expenditure is defrayed from a loan, it must eventually be redeemed out of revenue. No adequate definition of capital expenditure exists in its application to local authorities, and each council decide for themselves, within certain broad limits, what proportion of their expenditure shall be treated as capital expenditure, and what proportion revenue expenditure. The two views in most common acceptance in this connection are : (1) any expenditure for which a loan is, or can be, raised is regarded as capital, and (2) any expenditure which is incurred for the purpose of constructing or acquiring an asset more or less permanent in character is regarded as capital, whether or not the expenditure is met by means of a loan.

Whatever may be decided as constituting capital expenditure, the cost must eventually fall upon income, because whenever a loan is raised, that loan must be repaid either by yearly or half-yearly instalments, or at the end of the period of years for which it was raised, a sinking fund for its redemption being formed in the meantime. [25]

INCOME OF A LOCAL AUTHORITY

The income of a local authority is derived from various sources, and for the purpose of easy calculation may be divided into four main groups, viz. : 1. Miscellaneous income ; 2. Government grants ; 3. Loans ; and 4. Rates.

1. **Miscellaneous income** can be sub-divided as follows :

(a) *Income directly resulting from remunerative expenditure such as Trading Undertakings and Assets.*—Of trading undertakings the principal are gas, electricity, water and transport, and revenue is obtained from the sale of the commodity, as in the case of the first three of these undertakings, or for services

rendered, as in the case of transport. Additional income is derived from the sale of residuals resulting from the manufacture of a commodity, such as coke and tar in the case of a gas undertaking, rent for the hire of apparatus, the sale of superseded plant and similar assets. From estates, the principal income is naturally rent received.

- (b) *Income derived from Rate Fund Services* includes sums received in respect of public baths; fines and sale of books in the case of a library; admission charges where made and sales of catalogues in the case of a museum; tolls and dues from market undertakings; fees charged for the hire of tennis courts, bowling greens and various pitches for games, in connection with recreation grounds; charges made for concerts, theatres and other entertainments, where these are provided by the authority; and receipts from lavatories and public conveniences.
- (c) *Income from Administrative Rate Fund Services* includes fines imposed by courts, fees under the Land Charges Act, 1925 (c), legal fees in connection with mortgages under the Housing and Small Dwellings Acts, and miscellaneous legal fees resulting from the duties carried out by the legal department of the authority; interest on investments and sundry miscellaneous income, derived from any other source, which is due to the local authority.
- (d) *Capital Receipts* result chiefly from the sale of capital assets including the sale of land and the sale of superseded assets other than those included in (a) above. [26]

2. Government Grants.—These grants vary according to the purposes for which they are contributed, thus :

Elementary Education.—The grant is payable on a formula basis (d), but the formula is designed so that the council will receive approximately 50 per cent. of their approved net expenditure.

Higher Education.—Grants payable are based on 50 per cent. of the approved net expenditure (e). Grants are also payable in respect of secondary and adult education (f).

Police.—The amount payable in this case is also 50 per cent. of the approved net expenditure.

Housing.—Grants are payable in respect of housing schemes operated by local authorities, the amounts varying according to the Housing Act under which the scheme is provided, and the date when the houses were completed.

Unemployment Grants.—These consist of a proportion of the expenditure or a percentage of the loan charges over a period of years, in accordance with the date upon which the grant was made, and the purpose for which it was obtained.

Local Taxation Licences.—The duties levied by means of these licences, which include licences for armorial bearings, dogs, male servants and gun and game licences, are collected only by county councils and county borough councils.

(c) 15 Statutes 524.

(e) See Vol. V., pp. 172, 173.

(d) See Vol. V., pp. 170, 171.

(f) See Vol. V., pp. 174—176.

General Exchequer Grants.—These grants are payable under Part VI. of the L.G.A., 1929 (g). In the case of counties and county boroughs the total grant is divisible in accordance with sects. 88—90, and the Fourth Schedule to the Act (h), but in the case of non-county boroughs and districts the grant is a capitation payment, the amount per head being calculated also on a formula prescribed in sect. 91 and the Fourth Schedule to the Act (i). Certain supplementary and additional grants are payable in special circumstances.

Grants in aid of Capital Expenditure.—In certain cases Parliament is prepared to pay grants for capital purposes such as for the construction of new police quarters, schools and road improvements. The local authority is informed in advance of the amount or percentage which will be allowed to rank for grant. [27]

3. *Loans.*—The principal amounts received by the councils from loans arise from the issue of stock and mortgages. Some councils continue to issue Housing Bonds, the receipts from which must of course be applied to housing purposes, and a few councils have power to issue Money Bills (k).

By sect. 215 of L.G.A., 1933 (l), councils of boroughs, districts and parishes may, without the sanction of a Government department, borrow money from a bank or otherwise, by way of temporary loan or overdraft, for the purpose of meeting revenue expenditure prior to the receipt of rates or other revenues, and also for the purpose of defraying expenditure, pending the receipt of a more permanent loan which they have been authorised to raise. [28]

4. *Rates.*—Any deficit which may be incurred, or which is likely to be incurred (after deduction from the expenditure of the receipts from the various sources mentioned above), must be a charge upon the local rates, and local authorities are empowered by sect. 12 (1) of the R. & V.A., 1925 (m), to levy a rate or issue a precept for this deficiency, and before such a rate is levied it is necessary to make a detailed estimate of the income and expenditure for the period of the rate, usually six months or a year. Included in the estimate may be a sum for any deficit arising in connection with trading undertakings, or on the other hand a credit may be received by the rate fund from the profits of trading undertakings. [29]

VARIATION IN THE INCIDENCE OF LOCAL CHARGES.

The table printed below indicates the variations which have occurred in the incidence of the cost of the various services, and discloses a marked change over a period of years. In the earlier years it will be observed that Government grants were of comparatively small proportions, but that in recent years the grants paid by the Exchequer are much nearer the amount collected by means of rates from the rate-

(g) 10 Statutes 937.

(h) *Ibid.*, 939, 940, 981.

(i) *Ibid.*, 941, 981.

(k) See title BILLS, BORROWING BY, at p. 61 of Vol. II.

(l) 26 Statutes 422. This section replaces s. 12 (2) of the R. & V.A., 1925 (14 Statutes 637), and other enactments.

(m) 14 Statutes 636.

payers. The table also illustrates the very large increase in the expenditure of local authorities during the last forty-five years. The particulars are obtained from the Annual Report of the M. of H. for the year 1932-33 (n).

Financial Year.	Total expenditure other than from Loans.	Receipts from Rates.	Receipts from Grants.
	£	£	£
1884-85	44,053,904	25,662,552	3,621,508
1894-95	59,715,074	33,855,283	8,993,680
1904-05	107,731,625	56,047,715	19,597,046
1914-15	153,274,184	73,733,826	23,160,815
1924-25	354,926,068	141,977,060	81,741,763
1930-31	432,703,749	149,895,968	130,158,587 (o)

A number of varying factors are responsible for these changes. The increase in the total cost is due to a gradual change of public opinion as to the desirability of, or perhaps, the necessity for the provision or extension of a service, the local authority to embark upon heavier expenditure in order to satisfy local demands. In other cases the driving force has emanated from the Central Government, who have resolved upon a course of action as a National policy and require fresh services to be undertaken or services improved. A typical example of this arises in connection with the provision of education, in which the cost in round figures of the service has risen from £3,900,000 in 1884-85 to £86,600,000 in 1930-31; or a more recent example which can be given is that of housing, in which case the cost has risen from £900,000 in 1914-15 to £35,000,000 in 1930-31. Another example indicating the increased cost of the services supplied by local authorities is that of public health, in which case the cost in round figures of the service in 1904-05 was £10,100,000, which increased to £14,100,000 in 1914-15, to £32,800,000 in 1924-25, and reached £42,500,000 in 1930-31. In some cases it is the custom of the Central Authority to recognise that the services provided are of a national or semi-national character, and in consequence the cost is defrayed partly by the Exchequer and partly by the local authority. The proportions vary according to the circumstances in each case, but depend upon the extent to which the service is national or local, or in some cases upon the urgency with which the Central Government require the service to be developed.

To some extent, the incidence of local charges has been altered by the Exchequer grants payable under the L.G.A., 1929, to which reference has already been made, and it is therefore difficult to say exactly in what proportion any individual charge to a local authority, for which no specific grant is made, has increased. In any case the grants payable under the Act of 1929 are being based upon a formula which will be variable every five years (p), making it a matter of difficulty to provide any method of allocation, even if such allocation were desirable. [30]

(n) Fourteenth Annual Report of the M. of H. 1932-33, Cmd. 4372, pp. 148-154.

(o) Excluding £7,133,364 for capital purposes.

(p) As to the second fixed grant period ending March 31, 1937, see the L.G. (General Exchequer Contributions) Act, 1933; 26 Statutes 289.

LOCAL CONTROL OVER EXPENDITURE

From the various Tables which have been given it has been shown that the expenditure of local authorities has grown very rapidly in recent years, and this increase in expenditure has placed a constantly increasing burden upon local ratepayers. Much of this increased burden has been undertaken by councils at the instance of the Central Government, who have passed laws under which the councils have been required to undertake and administer various schemes. At the same time it must be recognised that although the councils are required to undertake services, they have considerable discretion as to the extent to which these services shall be developed, and one of the objects of the block grant system under the L.G.A., 1929, was to give increased powers of control to local authorities. It should therefore be noted that finance in local government does not involve merely the provision of funds to meet expenditure as it falls due, but includes also the exercise of control over services and expenditure in such a way that the income and the expenditure of the council may be balanced without straining the rateable capacity of the area, and that councils may ensure for their administration a proper application of the science of the profitable management of money and of monetary affairs, to the end that contrary cycles (periods of increasing expenditure followed by periods of extreme economy which are inevitably uneconomic in their effects) may be avoided. [31]

LONDON

The provisions of the L.G.A., 1933, as to financial control, other than Parts X. and XI. relating to accounts, audit and local financial returns (*q*), do not apply to London. Sect. 74 of the L.G.A., 1888 (*r*) as to the annual budget, sect. 80 of that Act (*s*) as to the incurring of liabilities of over £50 and other financial provisions of that Act still apply to the L.C.C., except that by sect. 67 of the L.C.C. (General Powers) Act, 1933 (*t*), the limit of six months referred to in sect. 68 of the Act of 1888 is repealed. The enactments governing the appointment and duties of the finance committees of the L.C.C. and borough councils in London have recently been altered by sects. 20, 28 of the L.C.C. (General Powers) Act, 1934 (*u*); see the part of the title FINANCE COMMITTEE relating to London. [32]

As regards borrowing and methods of repayment and capital expenditure, the L.C.C. is subject to the supervision of H.M. Treasury instead of the Minister of Health (see title BORROWING). The council also sanctions the borrowing of money by metropolitan borough councils, although loans for certain purposes are sanctioned by the M. of H. or the Electricity Commissioners; see pp. 224, 226 of Vol. II. [33]

(*q*) 26 Statutes 424—439.

(*s*) *Ibid.*, 751.

(*u*) 27 Statutes 412, 417.

(*r*) 10 Statutes 746.

(*t*) 26 Statutes 598.

FINANCE COMMITTEE

	PAGE		PAGE
APPOINTMENT OF A FINANCE COM-		ADVANTAGES OF A FINANCE COM-	
MITTEE - - - - -	22	MITTEE. PERSONNEL - - - - -	24
FUNCTIONS AND DUTIES - - - - -	23	LONDON - - - - -	25

See also titles : BUDGETARY CONTROL ;
FINANCE ;
FINANCE DEPARTMENT.

Appointment of a Finance Committee.—County councils and metropolitan borough councils (for which latter, see *post*, p. 26) are the only local authorities who are under a statutory obligation to appoint a finance committee, although in practice a finance committee is commonly appointed by borough councils and urban district councils under the general power to appoint committees conferred by sect. 85 of the L.G.A., 1933 (a). [34]

In the case of county councils, sect. 86 of the L.G.A., 1933 (b), requires a county council to appoint a finance committee consisting of such number of members of the council as they think fit for regulating and controlling the finance of the county, and to fix the term of office of the members of the committee. Subject to the provisions of any enactment relating to the standing joint committee or to any other statutory committee, no costs, debt or liability exceeding £50 may be incurred by a county council except upon a resolution of the council passed on an estimate submitted by the finance committee (sect. 86 (2)).

All payments out of the county fund, unless made in pursuance of the specific requirements of any enactment, or of an order of a competent court, or of a justice of the peace acting in the discharge of his official functions, must be made in pursuance of an order of the county council, which must be signed by three members of the finance committee present at the meeting of the council at which the order is made (sect. 184 (2)) (c). Any such order must be countersigned by the clerk of the county council and may include several payments (*ibid.*). While the order is actually that of the county council, it can only be made upon the recommendation of the finance committee (sect 184 (3)). [35]

It is also enacted that the notice of a meeting of a county council at which a resolution for the payment of a sum out of the county fund (otherwise than for ordinary periodical payments), or a resolution for incurring any costs, debt, or liability exceeding fifty pounds, will be proposed, shall state the amount of the said sum, costs, debt, or liability, and the purposes for which it is to be paid or incurred (d).

(a) 26 Statutes 352.

(b) *Ibid.*, 353.

(c) *Ibid.*, 406.

(d) L.G.A., 1933, 3rd Sched., Part I. (4); *ibid.*, 496.

It is often convenient for a local authority which is also a rating authority to appoint one committee to exercise the functions of both finance and rating committee; provision was made for this by sect. 1 (3) of the R. & V.A., 1925 (e), which was repealed by the L.G.A., 1933, and replaced by sect. 85 of that Act. [36]

Functions and Duties.—Broadly speaking, the finance committee of a council should be the medium through which the authority supervise and control their finance. This function has been discussed in the title BUDGETARY CONTROL. As already mentioned, it is found convenient for the finance committee to act also as a committee of the rating authority in rating matters.

A finance committee appointed by a council under their general power to appoint committees under sect. 85 of the Act of 1933 (*supra*), may not include persons who are not members of the council, and is subject to the reservations mentioned in the section of matters which may not be delegated to a committee, viz. the levy of rates, the issue of precepts or borrowing (sect. 85 (3)). [37]

The statutory finance committee of a county council are required (f) to regulate and control the finance of the county; and membership of this committee is also restricted to members of the county council. The wide powers vested in the committee give rise in practice to difficulties which will be discussed later.

In particular the finance committee should be responsible for submitting all estimates for rates to the council and for the examination of all accounts recommended for payment by other committees. In both these duties, strict regard must be had to any regulations adopted by the council for the purpose of regulating their finance. The finance committee should make recommendations for the amendment or extension of these regulations from time to time if found desirable.

[38]

The duties of a finance committee should also include arrangements for the raising of loans in the exercise of any borrowing power possessed by the council.

Subject to any powers that may be delegated to any other committee, e.g. the establishment or building committee, the finance committee will be responsible generally for the control of the financial officer and his department.

The duties imposed on committees vary considerably in different authorities, but it is frequently found convenient to refer questions of insurance to the finance committee, and where the council have power to establish an insurance fund, the management of the fund is usually assigned to the finance committee. See also title INSURANCE FUNDS OF LOCAL AUTHORITIES. [39]

Reference has already been made to sect. 184 (3) and sect. 86 (2) of the L.G.A., 1933 (g), which relate to county councils. A refusal of the finance committee to recommend a payment under sect. 184 (3) would not apparently prevent a creditor from suing and obtaining judgment against the council. Under sect. 86 (2) there need be no recommendation by the finance committee, but an estimate must be submitted by them; an obdurate committee might therefore attempt to

(e) 14 Statutes 618.

(f) L.G.A., 1933, s. 86 (1); 26 Statutes 353.

(g) 26 Statutes 406, 353.

veto the incurring of expenditure under a programme desired by the council. The council could, however, at the appropriate time, appoint a new committee, but although, in general, powers delegated by a council to a committee may be resumed by the council, if they think fit (*h*), it is doubted whether this doctrine would allow of a revocation of the powers of the finance committee of the county council, as this course might be held to contravene sect. 86 (2) of the Act of 1933.

[40]

Difficulties have been experienced by county councils in working the corresponding provisions in sect. 80 of the L.G.A., 1888 (*i*), especially where the county council meet only four times a year, and unforeseen liabilities have to be incurred and discharged. These difficulties appear to have been avoided by placing lump sums at the disposal of committees. [41]

Advantages of a Finance Committee. Personnel.—It is important to ensure that the recommendations of a finance committee carry sufficient weight, and this can be done (1) by a careful consideration of the personnel of the committee by the council, and (2) by a scrupulous avoidance by the committee of any attempt to adjudicate upon the policy of other committees, and (3) by confining their recommendations to the council to the financial effect of proposals referred to them.

In regard to personnel, the practice of making the chairmen of all spending committees of the council *ex officio* members of the finance committee is not without disadvantages. On the other hand, there is much to be said for the suggestion that a finance committee should be appointed by the free vote of the council, without regard to any usual arrangement restricting the number of committees to which a member may be appointed. The committee should not be too large in number

[42]

In regard to (2) it must not be forgotten that the decision on any question must be made by the council as a whole. The recommendations of the spending committee should be submitted to the council, together with the report of the finance committee on the subject, and the council, as the ultimate authority, should decide, after a review of the points of view submitted. The following extract from the general instructions to committees operating in Birmingham is of interest on this subject.

“To submit to the Finance Committee copies of all reports relating to capital expenditure and other expenditure, not within the approved estimates, at least 18 clear days prior to the Council Meeting at which it is proposed such reports are to be presented together with full information, so far as possible, in the form to be prescribed by the Finance Committee, in order that the Finance Committee may consider whether, having regard to the financial aspect of the scheme and financial obligations of the Corporation, the proposed expenditure should be approved. The Finance Committee shall report their decision to the Committee concerned. If any Committee is not satisfied with the decision of the Finance Committee upon any proposal submitted as above, such Committee may report its recommendations in the same form as submitted to the Finance Committee to the Council in the

(*h*) See *Huth v. Clarke* (1890), 25 Q. B. D. 391; 33 Digest 17, 68; and the summary of that case on p. 273 of Vol. III.

(*i*) 10 Statutes 751; repealed by the L.G.A., 1933.

usual way, but in any event the report of the Finance Committee shall be presented with the report of the Committee."

The view that the policy of the finance committee of a council is "beneficent obstruction" is sometimes allowed to obscure the fact that questions of broad financial policy must frequently arise and that the finance committee have a positive duty to report on such questions.

A finance committee must take a long view and should seek the authority of the council for the preparation of estimates of capital commitments over a longer period than one year, so that the future trend of rates may be watched. A number of essential or desirable schemes, each of which separately could be afforded, may in the aggregate make unreasonable demands on the ratepayers, and it becomes necessary to determine priorities. In such matters the part played by the finance committee may be both beneficent and constructive. [43]

London.—The finance committee of the L.C.C. consists of fifteen members (excluding *ex-officio* members) appointed under sect. 20 of the L.C.C. (General Powers) Act, 1934 (*k*), replacing sect. 80 (3) of the L.G.A., 1888 (*l*). Financial control is exercised by virtue of statutory enactments and the standing orders of the council. Under the procedure laid down, the finance committee are afforded an opportunity to advise the council on the financial effect of all proposals for expenditure before liability is incurred. The finance committee submit the annual estimates to the council, accompanied by a report, and they are directed, as regards expenditure on maintenance account, to have regard to the amount which, in their opinion, the council should raise by county contributions in the year and, as regards capital expenditure, to the maximum amount which, in their opinion, the council should seek to borrow in the year. The finance committee are generally responsible for the estimates as a whole, but the chairman of each spending committee moves the approval of the estimates of his committee. If the finance committee are not in agreement with any committee as to the amount of any estimate, they may determine the amount of the estimate to be submitted to the council, or it is open to the chairman of the finance committee to move an amendment of the motion made by the chairman of the spending committee. On the passing of the annual votes, the various committees of the council are authorised to expend during the financial year for the several objects specified therein, sums not exceeding the total amounts of the votes, subject to the concurrence of the finance committee, in the case of items exceeding £500. This concurrence is not required as regards certain specific matters in the case of certain committees, nor does it apply to stores for current use or continuing expenditure. Uniformity of financial administration is secured by rules and regulations made by, or on the advice of, the finance committee for the guidance of the various committees and departments of the council. [44]

Under sect. 8 (3) of the London Government Act, 1899 (*m*), as amended by sect. 28 of the L.C.C. (General Powers) Act, 1934 (*n*), metropolitan borough councils are required to appoint a finance committee consisting of members of the council for regulating and

(*k*) 27 Statutes 412.
(*m*) 11 Statutes 1230.

(*l*) 10 Statutes 751.
(*n*) 27 Statutes 417.

controlling the finance of the borough. They may delegate to any committee with or without restrictions or conditions as they think fit, any functions exercisable by them with the exception of the power of levying or issuing a precept for a rate or of borrowing money. The number of members of the finance committee and their term of office must be fixed and may be varied from time to time by the council. An order for the payment of any sum must not be made by the council except in pursuance of a resolution of the council passed on the recommendation of the finance committee. No costs, debt or liability exceeding £50 must be incurred by the council except upon a resolution of the council passed on an estimate submitted by the finance committee. The last-mentioned provision does not, however, apply to the making of payments in pursuance of a precept from another authority. The notice of the meeting at which any resolution for the payment of any sum by the borough council (otherwise than for ordinary periodical payments) or any resolution for incurring any costs, debt or liability exceeding £50 will be proposed, must state the amount of such sum, costs, debt or liability and the purpose for which they are to be paid or incurred.

[45]

FINANCE DEPARTMENT

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See also titles :

ACCOUNTS OF LOCAL AUTHORITIES ; AUDIT ; BUDGETARY CONTROL ; COSTING ;	FINANCE COMMITTEE ; FINANCIAL OFFICER ; OFFICERS OF LOCAL AUTHORITIES.
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For a complete list of all titles dealing with Finance see that title.

Introduction.—The main function of a finance department is to collect the income of a local authority and to pay its accounts.

The finance department must also take steps to prevent the expenditure of any department exceeding the estimated amount approved by the finance committee and the council. The department should be able to supply statistics of the income and expenditure of the authority and of any individual department at any given time. Cost accounts which give required information at short notice are necessary.

Although large authorities may delegate the administration of particular services to committees controlling departments who form their own finance sections, a council is not permitted to delegate power to raise loans or make rates. The finance department must therefore retain some control over these sections. Systems of sectionalising are dealt with *post*, pp. 30—33. [46]

Financial Regulations.—The council should prepare standing orders to regulate the work of the department and to define its relationship with other departments. The clearer the regulations, the less friction will there be.

The following standing orders are compiled from those in operation in large and small boroughs. They may be adapted to suit local circumstances :

1. The whole of the finance of the Corporation shall be subject to the supervision and control of the Finance Committee.

2. The collection and recovery of all revenue and charges shall be subject to the control of the Finance Committee, and all monies of whatever kind shall be paid to the Treasurer or his representative, and the Treasurer

shall see that all receipts are properly accounted for and paid into the Corporation's bankers daily.

3. The Finance Committee shall see that an efficient system of audit is in operation for all accounts of the Corporation.

4. All insurances of the Corporation, whether for Fidelity Guarantee, Fire, Workmen's Compensation, Third Party Risks, or any other forms of insurance, shall be subject to the control of the Finance Committee, who shall, if necessary, confer with the several Committees as to the amount of risk to be covered.

5. The Finance Committee shall report monthly to the Council showing the balance of the various accounts of the Corporation, distinguishing the debit and credit balances on (a) revenue accounts; (b) capital accounts; and (c) sinking fund accounts; and showing the net balance to the credit or debit of the Corporation.

6. The Finance Committee shall make recommendations to the Council for the disposition or investment of funds accrued from any source, including balances of the trading undertakings, revenues derived from Corporation properties, and rate surpluses.

7. No Petty Cash Accounts shall be kept in any office of the Corporation without the consent of the Finance Committee. Any such account authorised by the Finance Committee shall be subject to the supervision of the Treasurer, who shall give instructions as to the manner in which the account is to be kept, and periodically examine it to ensure that the instructions are being complied with.

8. All account books and forms of account shall be ordered by or through the Treasurer, and be in such form as may be approved by him.

9. All receipt forms, tickets, etc. required for any department of the Corporation shall be ordered by and delivered to the Treasurer, and such receipts, tickets, etc., shall be issued to the officers concerned by the Treasurer.

10. All Committees shall forward to the Finance Committee copies of all reports relating to capital and other expenditure not covered by the approved estimates, at least five days before the monthly meeting of the Finance Committee, together with full information in the form prescribed by the Finance Committee, so that the Finance Committee may consider whether, having regard to the financial aspect of the scheme, and the financial obligations of the Corporation, the expenditure shall be recommended to the Council for approval.

11. All accounts, duly certified by the proper heads of departments as to quantities and prices, shall be delivered to the Treasurer two clear days before being submitted to any Committee for approval, and it shall be the duty of the Treasurer to have such accounts examined as to their arithmetical accuracy, and, if correct, to certify and submit the same to the several Committees, and all such accounts shall then be referred to the Finance Committee for payment.

12. The payment of all accounts due from the Corporation shall be made by the Treasurer, after approval by the Finance Committee, or a Finance Sub-Committee appointed for that purpose, such approval to be indicated by an order on the Council's bankers, signed by three members of the Council and countersigned by the Town Clerk.

13. Before submission to the Council, and after approval by the spending Committee, all accounts shall be examined and certified by the Finance Committee, and any accounts not approved shall be referred back to the committee concerned.

14. A Finance Sub-Committee shall deal with the direct payments of salaries, wages, contracts, interest on and repayment of loans, and accounts of urgent importance, and shall report all such payments at the next meeting of the Finance Committee for confirmation by the Council.

15. All payments relating to contracts shall be made only on submission of a form or certificate duly completed by the official responsible for the supervision of the contract, giving full information as to the contract, the work completed thereunder and the payments made and to be made, and no

payment shall be made in respect of additions or variations of the original contract price, unless such additions or variations have been approved by the Committee concerned. The final payment in respect of a contract shall not be made until a resolution to that effect has been passed by the appropriate spending Committee.

16. Any work or article, the cost of which exceeds £50, shall be the subject of a resolution, and such work or article shall in all cases where practicable be distinctly specified, and the maximum amount authorised shall be set out, provided that no resolution shall be required for work or purchase of a routine or customary nature.

17. An estimate of all income and expenditure applicable to the financial period concerned shall be made by the Finance Committee before the making of a rate. This estimate shall be submitted to the Council at their February meeting.

18. The estimates of all Committees shall be submitted to the Finance Committee before a Rate is made, and the Finance Committee shall accept, or may refer back an estimate to a Committee if they consider such a course necessary. If the financial position of the council appears to warrant it, the Finance Committee, in referring back any such estimate, shall state the total amount which will be allocated for the expenditure of the Committee, and the Committee shall amend their estimates to accord with the amount allotted to them by the Finance Committee.

19. Any proposed expenditure involving a sum exceeding £25 to be paid for out of revenue, and not included in the estimates for the year concerned, shall be referred by the spending committee to the Finance Committee, who will consider the matter in its financial aspect, and either approve or refer it back to the Committee concerned for reconsideration.

20. If any Committee, upon reconsideration of any matter referred back to them by the Finance Committee, desire to adopt a course differing from the recommendations of the Finance Committee, they shall submit their proposals to the Council with the comments of the Finance Committee, and the Council shall decide upon the course to be adopted.

21. No Committee shall have the power to transfer any saving made on one heading of expenditure included in the estimates, towards additional expenditure under another head, without the sanction of the Finance Committee.

22. No Committee may authorise, without the approval of the Finance Committee, the commencement of any work in respect of any proposal not included in the estimates, on the assumption that the proposal will be included in the estimates for the ensuing financial year.

23. All questions relating to salary, increases of the official staff, and matters affecting the pay and conditions of work of any officer or employee, and all matters relating to the Superannuation Scheme of the Council shall be referred to the Finance Staff Sub-Committee.

24. All recommendations for increases of salary or pay shall be submitted to the Finance Committee in January of each year, and all such increases shall operate from the 1st April in each year: provided that the Finance Committee, if they hold that exceptional circumstances exist, may consider a recommendation submitted to them in any month of the year and may in any such instance direct an increase of salary or pay to operate from such date as they may determine.

25. The payment of all salaries, wages, superannuation, compensation and other emoluments to officers, servants or employees, or to former officers, servants or employees, shall be made to such persons by the Treasurer, subject to the control of the Finance Committee.

26. The Finance Committee shall require all spending committees, once in every year, to submit an estimate of the capital expenditure which they desire to incur during the ensuing financial year, together with a forecast of probable capital expenditure for a further period of four years, indicating the various items of expenditure in order of priority, and the Finance Committee shall report thereon to the Council each year.

27. All matters in connection with the borrowing or reborrowing of monies authorised and directed by the Council, and all other matters in connection with the raising or repayment of loans, shall be subject to the supervision and control of the Finance Committee.

28. All negotiations for loans and the raising of them shall be referred to the Finance Committee, who shall have power to delegate authority to the Chairman and Treasurer for the time being to negotiate all loans within limits to be prescribed by the Finance Committee.

29. All expenditure for which a loan can be raised shall be referred to the Finance Committee, and the Finance Committee shall recommend to the Council whether the expenditure shall be defrayed from revenue, or whether a loan shall be raised. If it should be decided to apply to a Government Department for authority to raise a loan, the Finance Committee shall recommend the period within which the loan should be redeemed.

30. No payments shall be made on capital account by any Committee without a certificate of the Town Clerk that any necessary borrowing powers have been obtained, and unless the Council, after the report of the Finance Committee, shall sanction the expenditure being defrayed.

31. The Finance Committee shall inform the Council whenever any Committee require a payment on capital account in excess of the amount either authorised by the Council, or sanctioned by the sanctioning Authority, and in the latter event they shall include in their report a recommendation as to whether such excess expenditure shall be the subject of an application for a supplementary sanction, or shall be defrayed from revenue.

32. The investment or utilisation of all Sinking Funds, Reserve Funds and other accumulations shall be made by the Treasurer, within limits to be prescribed by the Finance Committee. The sale or realisation of investments shall only be made upon the recommendation of the Finance Committee.

[47]

Sectional Organisation of Finance Department.—The Finance Department, except in the smallest authorities, can conveniently be divided into sections for the efficient carrying out of its work.

The duties of finance departments vary so greatly, even within a given type of authority such as a county or a county borough, that it is impossible to give in detail a typical scheme of sectionalising, but the following are the sections which are likely to be found in a borough with a population of, say, between 50,000 and 200,000: (1) Secretarial; (2) Accountancy; (3) Loans; (4) Audit; (5) Cash; (6) Local Taxation Licences; and (7) Mechanical. [48]

The Secretarial Section will deal with letters and remittances received by post and forward them to the appropriate office or section. All outgoing letters will pass through the section, which will also be responsible for all reports and matters affecting the finance and other committees. [49]

The Accountancy Section will carry out all duties not specifically allotted to another section. These duties will include checking accounts for payment, their submission to the appropriate committee, and the preparation of cheques to pay accounts when passed by the council. This section will also be responsible for book-keeping records, Government returns, including the annual Epitome of Accounts, preparing estimates for the making of a rate and the compilation of the Treasurer's Annual Abstract of Accounts. Costing records will usually be allotted to this section in co-operation with the mechanical section, but sometimes costing accounts may be a duty of the mechanical section alone. [50]

The Loan Section will prepare detailed estimates of the loan requirements over a period of years, and particularly for twelve months in advance. This section will then have to arrange for the negotiation of loans

to meet the probable capital expenditure. It will be responsible for all loans, whether raised by means of stock, mortgage, bank overdraft or in any other way, and for repaying, in accordance with the terms of the borrowing power and the security, loans falling due for repayment. It will also be responsible for sinking fund operations and the preparation of interest and dividend warrants. While the loan section would normally be responsible for the keeping of a record of all loan transactions, including for this purpose the registers of mortgage and stockholders, it should be noted that the L.G.A., 1933, and also some local Acts make the keeping of the register of mortgages a statutory duty of the Town Clerk. In such case co-operation between the Finance Department and the Town Clerk's Office should be established in order to avoid duplication of records. [51]

The Audit Section will occasionally be subdivided so that one division is responsible for rating work, another for trading undertakings, and so on throughout all the activities of the authority. While this method ensures the efficiency of the audit clerks in the work of their respective divisions, it makes collusion possible between the audit clerk and the accounting officers. It is more satisfactory for the Audit Section to form one whole and for the chief audit clerk to arrange the work of each individual so as to minimise the possibility of collusion by constantly changing the work of each clerk. [52]

The Cash Section is another which may be further sectionalised if necessary, but arrangements are usually made to centralise the Cash Section and accordingly some cash offices will receive rates, payments for licences, income from trading undertakings and any other moneys due to the council. Usually a valuation division of this section is formed, which is responsible for valuations for rating, and occasionally a separate division is responsible for reading gas, water and electricity meters. [53]

Local Taxation Licences Section. Where the Chief Financial Officer is the Local Taxation Officer there may be a section of the Finance Department to deal with motor car and other local taxation licences, but in some authorities the Town Clerk or Chief Constable is the Local Taxation Officer and then the work, including collection, may be done by another department or in a separate office. [54]

The Mechanical Section will consist of typists, duplicator operators, and operators for addressing, calculating, accounting and other machines. This section will sometimes be responsible for cost accounts and is then divided into two groups, one being responsible for costing and the other for machines not used for costing records. A typing group may be formed within this section, to enable a senior officer to obtain the services of a typist at any time without delay. Such a practice is usually an economy as it permits a more equitable division of the work between the typists, which is not possible when typists are allocated exclusively to one or more officers or sections. [55]

Sectionalising in a Large Department.—Among the larger authorities the same general principle of sectionalising applies, but usually the accountancy section is subdivided, and each division has specified duties. The following illustrates the manner in which the subdivision can be made :

General, dealing with the preparation of accounts for committees. This division will collect accounts from the departments, check and present them to the appropriate committee and then pass them to the cashier's department for payment. [56]

Cashiers, paying accounts, salaries, wages and petty cash. [57]

Statistical, preparing all statistics, including Government Returns, such as the Annual Epitome of Accounts, and collating central records. [58]

Insurance, dealing with all insurances, other than National Health and Unemployment Insurance which are usually under the control of the division responsible for the payment of wages. Insurance is particularly important when the council operate their own insurance funds. [59]

Costing, dealing with all costing records and the supervision of stores. This work must be closely linked with the Ledger division and with the Mechanical division. [60]

Ledger, dealing with the book-keeping records of the department, the preparation and submission of accounts for audit and ultimately the preparation of the treasurer's annual abstract of accounts. [61]

Sectionalising in a Small Department.—Extensive sectionalising may be unnecessary for a town of, say, from 10,000 to 50,000 population, and the sections may be restricted to (1) Rating and Valuation Section; (2) Audit Section; and (3) Accountancy Section. If substantial loans are outstanding, a separate Loan Section may be formed. The rating and valuation section corresponds to the cash section of the larger authorities, but has a different name because rates are frequently the main source of income, county and county borough councils alone being responsible for the collection of payments in respect of local taxation and road fund licences, and small boroughs or urban districts possessing few trading undertakings. [62]

The duties of the Audit Section do not differ, except in degree, from those of the same section in a large authority, but to the Accountancy Section will be allotted the whole of the rest of the work of the department. [63]

Departments in which Sectionalising is not possible.—Very small councils will not sectionalise at all. The staff of the Finance Department may consist only of the Treasurer or Accountant, a rating officer, and perhaps a typist and junior clerk.. [64]

Sectionalising in a County Finance Department.—The organisation of a county finance department will be similar to that of a municipality. The chief difference is that the cash section is of less importance in a county than in a large borough or urban district, since a county council merely issues precepts to the rating authorities in their area and are not responsible for the detailed levy and collection of rates. The second difference is that a county council does not usually own electricity, water or transport undertakings. On the other hand the county council are responsible for the collection of licences and a separate section is usually created for their issue. [65]

Horizontal Sectionalising.—The basis of classification adopted for the purpose of organisation of the Finance Department so far considered is known as "vertical" or functional, whereas the Committee organisation of a local authority is more frequently "horizontal," *i.e.* on a service basis. In some cases there may be sectionalising of the Finance Department on this latter basis, as, for example, where a separate section deals with Education Finance, but complete organisation on these lines would generally be found impracticable. Such functions of the Finance Department as Rating, Borrowing, Audit and Insurance,

for example, could hardly be split up into sections for the various services administered and, even if practicable, would lead to overlapping and uneconomical employment of staff. The advantage of horizontal sectionalising is that the specialisation thereby secured tends to greater efficiency, but this would be outweighed by the more serious disadvantages which have been indicated. [66]

Office Machinery.—Office machinery can be divided into type-writing, adding and calculating, cash receipting, and accounting groups.

Typewriting Group.—Besides typewriters, the following machines may be useful :

(1) Public utility machines, used to prepare the consumers' accounts for gas, electricity and water, providing a summary of consumption and in the same operation entering the debit on the consumer's ledger card.

(2) Book-keeping machines, used in connection with loose-leaf books and the slip system.

(3) Mechanical adders, attached to ordinary typewriters for totalling each column in statements, committee schedules, etc. Running totals are shown as each item is typed, enabling a total to be inserted at any point.

(4) Duplicating machines.

(5) Addressing machines. Some types have a listing attachment for the preparation of rate books and rentals when these are in loose-leaf form.

(6) Cheque-writing machines. [67]

Adding and Calculating Group :

(1) Adding machines.

(2) Calculating machines. They can be used for preparing summaries of various accounts, preparing apportionments, pricing stores, etc.

(3) Listing machines. These are adding machines which give a printed record of the items which have been entered in the machine. They are used for preparing summaries of various accounts, totalling card ledgers, etc. [68]

Cash Receipting Machines.—These machines are used in the cash section to provide a safeguard against fraud. Apart from this safeguard, receipting machines are more rapid in operation.

(1) Cash registers which print the receipt on the demand, or account, at the same time printing a copy on a stub which is detached at one operation of the machine. The stub takes the place of the old counter-foil for posting, while a separate record of all transactions is made on a locked roll for audit. These machines total the receipts and analyse each item of receipt into the appropriate allocation column.

(2) There are various other forms of machines which are simpler and cheaper and merely impress a receipt on a suitably prepared demand, and provide at the same time the detachable posting slip. [69]

Tabulating, Sorting and Accounting Machines.—These machines are used primarily for costing, and enable extensive detailed analyses to be carried out speedily. The work in small departments would seldom suffice to keep such machines fully occupied. [70]

Other Appliances.—Wage-paying and change-giving machines :

coin-sorting machines ; postal franking machines and stamp affixers ; envelope sealers and openers ; dictaphones ; transporter systems for mechanical transport of files and documents ; internal telephone systems and duplicate posting systems. When it is desired to mechanise a department it is better to do so over a period of years. This avoids dislocation, interference with staff and the possible waste arising from the introduction of unnecessary machines. Expert advice is essential before installing expensive machines, in order to ensure that each machine can be used economically. [71]

Staff.—In organising his staff, the chief financial officer must keep before him the following principles :

(A) The staff must be organised to provide the maximum of internal check ; (B) Every man should be given the task for which he is best fitted ; and (C) If possible, change of work and environment should be made at frequent intervals, and ready opportunities for promotion should be facilitated. By internal check is understood the correlation of the work of one individual with that of others so that fraud or manipulation is impossible without collusion. When the work of the department is carefully arranged, it will be found possible to effect wide interlocking or internal checks. It is important to ensure, however, that the institution of a comprehensive system of internal check does not consist merely of the duplication of work. (See also titles AUDIT and AUDITORS, Vol. I., pp. 518—517 and 529—531.) [72]

FINANCIAL ADJUSTMENTS

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See also titles :

ALTERATION OF AREAS ;
DIFFERENTIAL RATING ;
GENERAL EXCHEQUER GRANTS ;

GRANTS ;
LOCAL TAXATION LICENCES ;
TRANSFER OF OFFICERS.

Introductory.—The circumstances in which financial adjustments are made as between a county and a county borough, and the nature of such adjustments, are thus described in a memorandum quoted in the First Report of the Royal Commission on Local Government in 1925 (a)—

1. The severance of an area of local government from the administrative unit by which it has previously been governed, whether it be on the formation of a new county borough or the addition to an existing county borough of a portion of an administrative county or other transfer of area from one authority to another, affects financially the ratepayers in their respective areas, and is, under various Acts of Parliament, and particularly the L.G.A., 1888 (b), made the subject of financial adjustment.

(a) Cmd. 2506, dated August 7, 1925, at p. 256, quoting a memorandum prepared by Mr. W. B. Keen and Mr. Arthur Collins, M. 1—4 (iv., 691).

(b) S. 62 of L.G.A., 1888 (10 Statutes 736), as to adjustments, has been repealed and re-enacted with variations in ss. 151—2 of L.G.A., 1933 (26 Statutes 389, 390).

2. While the severed area was governed by the county council or other administrative authority, it shared in the provision of buildings and institutions for the use or enjoyment of the whole of the area of that authority, its credit was pledged in the security offered to the investor who provided on loan the capital to defray the cost of permanent works, and its ratepayers were liable to be assessed in common with those of the rest of the area to rates necessary to meet the annual loan charges and to provide funds for the maintenance of all the administrative services.
3. When severance took place it ceased to contribute to those common charges, while on the other hand the authority of which it had formed a part ceased to be liable for the services which it had previously supplied in the severed area.
4. Financial adjustment was designed to meet these circumstances, and the matters to be taken into consideration broadly divide themselves into three groups—(1) revenues from State grants and local taxation licences, estate duties and Customs and Excise duties (c); (2) annual contributions to rates in relation to the expenditure in the severed area and in the remainder of the area of the administrative authority; (3) properties and assets and the debts (if any) thereon. The method of adjustment is partly prescribed by law and partly established by general practice. [73]

Apart from the fact that sect. 62 of L.G.A., 1888, the L.G. (Adjustments) Act, 1913 (d), and the L.G. (County Boroughs and Adjustments) Act, 1926 (e), continue to apply to questions of financial adjustments consequent upon alterations of boundaries or other changes which took effect before April 1, 1930, where such questions have not yet been settled, the statutory provisions relating to financial adjustments between all types of local authority are now contained in L.G.A., 1933 (f). These provisions closely follow the older law, and in discussing questions of financial adjustment it will suffice to refer to the material enactments in the Act of 1933, without quoting the enactments which preceded them. The alterations consequent upon which a case for financial adjustment may arise under that Act are as follows. [74]

Alterations affecting a County.—Under sect. 140 of L.G.A., 1933 (g), provisional orders, subject to confirmation by Act of Parliament, may be made by the Minister of Health for (i.) the alteration or definition of the boundaries of a county, (ii.) the union of a county with another county or with a county borough, and (iii.) the division of a county. Further, by sect. 143 an order can be made (iv.) for the alteration of county boundaries so as to bring within one county a non-county borough, district or parish, situate in two or more counties, or (v.) for an adjustment of boundaries between a county and county borough. In each of these cases the county council may either gain or lose area. And finally, and usually most important from the point of view of the

(c) Most of these revenues were discontinued in 1929; see *post*, p. 40.

(d) 10 Statutes 849.

(e) *Ibid.*, 878.

(f) Ss. 46, 151, 152 and Sched. V.; 26 Statutes 328, 389, 390, 507.

(g) 26 Statutes 379.

county, (vi.) a borough in the county may become, by Act of Parliament, a county borough, in which case the county wholly loses (h). [75]

Alterations affecting a Borough.—The most important alteration which can affect a borough and which gives rise to the greatest necessity for financial adjustment, is its constitution as a county borough. A non-county borough contributes to the county rates, but the award of the status of a county borough means the loss of the whole of its rateable area to the county. Other alterations which may financially affect a borough are (i.) the alteration or definition of its boundaries, (ii.) its union with another borough, or (iii.) the inclusion within it of an urban or rural district. [76]

Alterations affecting Urban or Rural Districts or Parishes.—Under sect. 141 (1) of the Act (i) orders can be made for (i.) the alteration or definition of the boundaries of an urban or rural district or of a parish, (ii.) the division of any such area, (iii.) the transfer of part of an urban or rural district to another such district, whether urban or rural, or the transfer of any part of a parish to another parish, (iv.) the union of one such district with another, or of a parish with a parish, (v.) the conversion of the whole or part of a rural district into an urban district or *vice versa*, (vi.) the formation of a new urban or rural district or parish. [77]

Creation of New Borough.—An urban or rural district, or any part of such a district may, with or without an adjoining area, be formed into a borough by a Royal Charter granted under sect. 129 of the Act (k). [78]

Establishment of Parish Councils, etc.—By sect. 46 of the Act (l), if an order is made by a county council under sect. 43, 44 or 45, establishing or dissolving a parish council, grouping parishes together, dissolving a group, or separating a parish from a group, the order may contain such incidental, consequential and supplemental provisions as appear to be necessary or proper for bringing the order into operation and giving full effect thereto, including provisions for the transfer and compensation of officers and for the adjustments of property, rights and liabilities as between parishes and groups of parishes. [79]

General County Review.—Most of the foregoing alterations, except those grouped in the paragraph on pp. 36, 37, can also be made by the county council on a general county review under sect. 46 of L.G.A., 1929 (m), or sect. 146 of L.G.A., 1933 (n). [80]

General Provisions as to Adjustment.—If an alteration of areas or authorities of one or other of the foregoing kinds is made by an order under the L.G.A., 1933, and a case for adjustment arises, the provisions applicable are sects. 151, 152 of the Act (o). Naturally the financial effect of some of the above alterations will only be very slight, and a case for financial adjustment does not necessarily arise. The Act contemplates that matters requiring adjustment will normally

(h) See L.G.A., 1933, s. 139; 26 Statutes 379.

(i) 26 Statutes 380.

(l) *Ibid.*, 328.

(n) 26 Statutes 384.

(k) *Ibid.*, 374.

(m) 10 Statutes 916.

(o) *Ibid.*, 389, 390.

be settled by agreement between the authorities concerned, and the opinion was expressed by a witness before the Royal Commission on Local Government in 1925 that only about one adjustment in seven ever went to arbitration on any point (*p*).

By sect. 151 (1), public bodies (*q*) affected by any alterations of areas or authorities made by an order under Part VI. of the Act (which may be taken to include all the alterations before described except the creation of a new borough or county borough), may from time to time make agreements for the purpose of adjusting any property, income, debts, liabilities and expenses of, and any financial relations between, the parties to the agreement, so far as these were affected by the alteration. A wide discretion is given, and any agreement entered into may provide (1) for the transfer to the acquiring authority, or the retention by the diminished authority, of any specific items of property, debts or liabilities, with or without conditions, (2) for the joint use by both authorities of any property (*e*), (3) for the transfer of any functions, or (4) for payment by either party to the agreement in respect of (a) property, debts, functions and liabilities so transferred or retained or of such joint user, or (b) remuneration or compensation payable to any officer or person. Where agreement is made for such a payment, this may be paid either by way of a capital sum or of a terminable annuity for a period not exceeding that allowed by the M. of H. (*s*). [81]

If an agreement is sealed between the acquiring authority and the diminished authority respecting matters for which financial adjustment can be claimed, that agreement is binding and conclusive on both parties. It does not, however, bind them as regards items not included in the agreement; and if, therefore, an additional burden not so provided for is subsequently found to exist, a claim to adjustment is not barred by the previous agreement (*t*). But, on the other hand, if an agreement is made which includes an item in respect of which it is subsequently found that no valid claim arose, the agreement if entered into *bona fide* by both authorities is not rendered invalid by such later discovery, and will not be set aside (*u*). As an agreement may be made with or without conditions, presumably it may include a condition for re-opening the adjustment at a later date if new circumstances arise which render the prior agreement inequitable (*a*). [82]

(*p*) Cmd. 2506, at p. 276.

(*q*) There is a long definition of "public body" in L.G.A., 1933, s. 305; 26 Statutes 467. It brings in not only local authorities, but trustees, commissioners, etc., for public purposes.

(*r*) Examples of types of property of the former undivided authority which will probably, as a matter of convenience, continue to require to be used in common by both the new authorities between whom the former district is divided are isolation hospitals, sewage disposal works and outfalls, waterworks and fire engines. For form of agreement as to these properties, see *Encyclopædia of Forms and Precedents* (2nd ed.), Vol. XII., p. 55.

(*s*) For periods allowed for repayment of loans, see s. 198; 26 Statutes 414.

(*t*) *Re St. Thomas R.D.C. and Heavitree U.D.C.* (1902), 66 J. P. 597; 33 Digest 25, 114.

(*u*) *Holsworth U.D.C. v. Holsworth R.D.C.*, [1907] 2 Ch. 62; 33 Digest 38, 203; *A.-G. v. Essex C.C.* (1907), 71 J. P. 557.

(*a*) See e.g. s. 32 (6), L.G.A., 1888 (10 Statutes 710), which though repealed so far as relates to grants discontinued under L.G.A., 1929 (see s. 137 and Sched. XII., Part VI., *ibid.*; 10 Statutes 974, 1017), is otherwise still in force, and there seems to be no reason why an agreement should not contain a similar provision. As to such cases, see *Glamorgan County Council v. Cardiff City Council and Swansea Borough Council*, [1915] 3 K. B. 438; 33 Digest 27, 130; *R. v. Minister of Health*, [1921] 1 K. B. 1; 33 Digest 26, 117.

Where the whole of two areas is amalgamated, or the whole of an urban district is added to a borough, the usual course followed is to "pool" the assets and liabilities of both areas, and if this course is adopted no financial adjustment is necessary. Occasionally a modification of this policy is made, and specific assets and liabilities are either reserved for the benefit of an existing area or adjusted, and the remainder pooled. This point usually comes up where an existing area owns a specially profitable undertaking and wishes to continue to reap the benefit of it. [83]

Where a charter creating a new borough is granted, sect. 151 of the L.G.A., 1933, as to adjustments does not apply automatically, because the charter is not an order under the Act, but the scheme of the Privy Council prepared under sect. 132 of the Act (*b*) may provide for adjustments. As, however, new boroughs are commonly formed of entire districts, provisions of this kind are seldom necessary. [84]

Arbitration.—If the two authorities fail to agree to an adjustment, the matter is to be referred to arbitration. Normally arbitration only takes place on points of difficulty, not on the whole question of compensation or adjustment. The Act provides for any matter which requires adjustment, and in respect of which the parties cannot agree, to be referred to the arbitration of a single arbitrator agreed upon by the parties, or, in default of agreement, appointed by the Minister (*c*). The Arbitration Act, 1889, applies to any such arbitration (*d*).

The arbitrator is almost invariably a King's Counsel, usually practising at the Parliamentary Bar and familiar with extension and adjustment cases (*e*). By sect. 151 (3) of L.G.A., 1933, his award may provide for any matter for which an agreement might have provided, that is any matter within sect. 151 (1), (2). Since on his appointment he has full authority to decide what is a matter for adjustment in the case before him and what is not, the jurisdiction of the Divisional Court is excluded (*f*), but he may state a special case for the opinion of the King's Bench Division, under sect. 9 of the Arbitration Act, 1934 (*g*) or may be ordered by the court so to do. The delivery to him of his appointment is to be deemed a submission to arbitration by both parties, and neither party can revoke the appointment without the consent of the other. [85]

Subject-Matters of Adjustment. 1. *Property.*—Property is the first of the matters mentioned in sect. 151 (1). In general the term includes all property, real and personal, and all estates, interests, easements and rights, whether equitable or legal, in, to and out of property, real and personal (*h*), belonging to authorities affected by an alteration of boundaries or other change. It does not necessarily follow on an alteration that all property of the diminished authority situate within the transferred area will be transferred to the acquiring authority; for example if an urban district is formed out of part of a former rural district, the offices of the R.D.C. if situate within the transferred area,

(b) 26 Statutes 376.

(c) L.G.A., 1933, s. 151 (3); 26 Statutes 389.

(d) Because it is not excluded; see Arbitration Act, 1889, s. 24; 1 Statutes 464.

(e) See First Report of the Royal Commission on Local Government, 1925, Cmd. 2506, pp. 276, 302.

(f) *Re Salop County Council* (1891), 56 J. P. 213; 33 Digest 25, 113.

(g) 27 Statutes 32.

(h) L.G.A., 1933, s. 305; 26 Statutes 407.

may very well not be included in the agreement for transfer. Normally the order itself indicates what property is to pass automatically, and this is generally limited to that relating exclusively to the transferred area, to houses within it erected under the provisions of the Housing Acts or land so situate acquired for housing, and to schools within the transferred area. All other property is usually retained by the diminished authority, and it is between property so transferred and retained respectively that the adjustment is made. If, after the adjustment has been completed, it should happen that the acquiring authority desire also to acquire retained property of the diminished authority situated within the transferred area, the necessary financial arrangements are made, not by adjustment but by ordinary sale and purchase. [86]

2. *Income*.—The expression “income” is not defined in the L.G.A., 1933, but broadly it includes all income from revenue-producing assets, and also the proceeds of local taxation licences and Exchequer grants under Part VI. of L.G.A., 1929. Apart from the two last mentioned, all questions of adjustment of income are dealt with under the heading “Increase of Burden” (*post*, pp. 49, 56), and for convenience the system of Exchequer grants and their re-apportionment on alteration of boundaries or authorities, is dealt with together as respects all authorities (*post*, pp. 43, 53). Local taxation licences remain. These are certain licence duties, the task of collecting which, and the revenue derived from which, were transferred to the councils of counties and county boroughs. They now comprise licences to deal in game, licences for dogs, killing game, guns, armorial bearings and male servants (see title LOCAL TAXATION LICENCES). Naturally questions of adjustment of these licences only arise where the authorities affected are county and county borough councils, both of whom are entitled to the produce of all such licences levied in their area; and since the area of the county for this purpose includes that of all non-county boroughs situate therein, the constitution of one of them as a county borough, or the inclusion of part of a non-county borough or district in a county borough, entails a certain loss to the county, and thus gives rise to an adjustment. The principles set out in sect. 32 of the L.G.A., 1888 (*i*), are usually followed. [87]

3. *Debts*.—The term “debts” is also not defined in L.G.A., 1933. It is generally understood to cover both current liabilities which will be cleared in the financial year’s accounts, and loan debts incurred in respect of capital assets. The former naturally present no difficulty. The latter, like property, may be dealt with in the order effecting the alteration, but usually a transfer of debts is limited to those relating exclusively to the transferred area and to schools, etc., otherwise difficulties would arise where one loan has been raised in respect of several matters, not all of which are transferred. Apart from specific loans so transferred, the question of loan debt is dealt with as a whole in the adjustment. [88]

4. *Liabilities*.—Liabilities is a wider word than debts, which connotes something actually owed even though it may not be presently payable, while liabilities may cover contingent and unascertained obligations. An example of a liability which is not yet a debt, but in respect of which it may be necessary to make an adjustment, is compensation to existing officers of authorities whose areas are altered.

If an officer is transferred to the new authority, no question arises; if he is retained by the old authority with diminished duties but the same salary, an increase of burden may be occasioned to the old authority, but this is dealt with under "Expenses." But where an officer loses his office as a result of the alteration, or is retained at a reduced salary, he will become entitled under the order to compensation for loss of office or diminution in salary (*k*), and in such cases the compensation payable may have to be adjusted as a liability between the authorities concerned. The question naturally depends on which authority is called upon to pay the compensation, and this is usually settled by a provision in the order. Payments in respect of remuneration or compensation to officers or other persons are especially recognised as matters for adjustment by sect. 151 (2) of the Act. An officer includes a servant (*l*). [89]

5. *Expenses*.—This is usually the most important head of the claim for adjustment, and the judicial history of the interpretation of this word is important in understanding sect. 152 of L.G.A., 1933. The same word was used in the repealed sect. 62 of L.G.A., 1888 (*m*). In a number of legal decisions given before 1904 in which arose questions as to what were expenses, local authorities whose areas had been diminished as a result of an alteration of boundaries had been allowed compensation from the acquiring authority for the loss of future rates leviable in the transferred area, towards their future expenses on services, where in the past the revenue from such rates exceeded the outlay on services in the transferred area. Where a part of a parish which had paid rates towards the repair of the main roads and county bridges of a county was transferred to a new authority, but contained neither a main road nor a bridge, so that there was no outlay thereon, the diminished county was allowed to claim for their loss in rates (*n*); and in other cases it was held that any consideration bearing on the question whether the ratepayers in the area of the diminished authority had been prejudiced financially by the change must be taken into account (*o*). But in 1904, in the case of *Caterham U.D.C. v. Godstone R.D.C.* (*p*), relating to the conversion of a part of the Godstone rural district into the Caterham urban district, the previous decisions were overruled, the House of Lords holding that the words "income" and "expenses" meant existing income and expenses and did not include revenue from future rates, and that the loss of a contribution of this nature was not a matter requiring an adjustment. In that case Lord ROBERTSON said, at p. 177, "It must be remembered that when . . . the authorities . . . proceed to adjust, they meet as separate and self-contained rating authorities, Caterham having been, by deliberate statutory proceeding, vested with the full and exclusive power of rating, for its own uses, within the boundaries assigned to it, and Godstone, while retaining its old name, having a different and smaller

(*k*) See L.G.A., 1933, s. 150; 26 Statutes 388, and titles COMPENSATION FOR LOSS OF OFFICE; TRANSFER OF OFFICERS.

(*l*) L.G.A., 1933, s. 305; 26 Statutes 467.

(*m*) 10 Statutes 736.

(*n*) *Re Buckinghamshire County Council and Hertfordshire County Council*, [1899] 1 Q. B. 515; 33 Digest 26, 123.

(*o*) *Re Rochdale and Haslingden Unions*, [1899] 1 Q. B. 540; 33 Digest 27, 127. See also *Re Llanwgonno School Board and Ystradyfodwg School Board* (1898), 62 J. P. 644; 33 Digest 30, 145, and *Re St. Thomas R.D.C. and Heavitree U.D.C.* (1902), 66 J. P. 597; 33 Digest 25, 114.

(*p*) [1904] A. C. 171; 33 Digest 26, 124.

jurisdiction compared to that which formerly existed. The direct and necessary result of setting up Caterham as an urban district is to establish not merely one but two new rating units, namely, Caterham and the lesser Godstone. The rating in each is necessarily on the basis of the new area; and it would be merely an accident if the rates in the two areas were the same after as before the separation. Now the assumption, and what I must venture to call the fallacy, of the judgments under review is that the Legislature intended that the two new bodies should set about what BRUCE, J. calls 'restoring the true balance'—that is to say, the former balance of rates. I see no warrant for any such assumption. On the contrary, I should suppose that in some cases at least one of the reasons why a new urban district is set up is because the rating is unfair, and would be made more equitable by dividing the rating area into two. . . . It is quite conceivable that the Legislature might have made it a condition of the setting up of a new rating body that it should purchase its independence, and might have taken the financial position in the year of independence as fixing the price. But this is an idea unexpressed in the statute." Lord HALSBURY had previously said, at p. 173, that it could not be presumed that in the case of an alteration of boundaries applicable to a municipal body which was to be for the future self-sufficing, the adjustment of its property, income, debts and liabilities was to be made the subject of compensating arrangements, and Lord DAVEY, at p. 176, that adjustment was a different idea from compensation, and that the Legislature should have expressly provided for compensation if it had intended that it should be paid for something which was only the inevitable consequence of putting the Act into force. [90]

A Joint Select Committee reported in 1911 that in their opinion compensation ought to be paid where one party would in future have to bear an increased burden, and their recommendations led to the passing of the L.G. (Adjustments) Act, 1913 (*q*), which, as amended by the L.G. (County Boroughs and Adjustments) Act, 1926 (*r*), and by sect. 108 (2) of the L.G.A., 1929 (*s*), is now replaced by sect. 152 (1) (b) of L.G.A., 1933 (*t*). By this section provision is, unless otherwise agreed, to be made in any adjustment under sect. 151 for payment to a local authority of such sum as seems equitable in accordance with rules contained in the Fifth Schedule to the Act (*u*) in respect of any increase of burden which, as a consequence of any alteration of boundaries or other change in relation to which the adjustment takes place, will properly be thrown on the ratepayers of the area of that local authority in meeting the cost incurred by that local authority in the discharge of any of their functions. It is, therefore, now the law that a new council must to some extent purchase their independence, and that to some extent the "true balance" of rates must be restored between the new and the diminished authority. But the Act imposes certain limitations, which are set out on p. 50, *post*. [91]

6. *Financial relations*.—This phrase was interpreted by Lord DAVEY in the *Caterham Case*, *supra*, as referring to any reciprocal financial

(*q*) 10 Statutes 849.

(*r*) *Ibid.*, 878.

(*s*) *Ibid.*, 950.

(*t*) 26 Statutes 390; but see *ante*, p. 36.

(*u*) *Ibid.*, 507. See also *post*, p. 50.

obligations which the undivided district and the severed portion may have incurred towards each other. [92]

Adjustments between Counties and County Boroughs.—Where a non-county borough in a county is constituted a county borough by Act of Parliament, or as was formerly more usual, by a provisional order confirmed by Act of Parliament (*a*), the Act or provisional order usually provides that the general enactments as to financial adjustments shall apply with slight modifications. Here the subject-matters of adjustment differ from those in most other cases. The amount of capital assets and liabilities affected will be comparatively small, since the major part of the property acquired by, and the loans attaching to, the new county borough, except public assistance buildings, road properties, etc., would previously be vested in the former non-county borough council and not in the county council; but adjustments are necessary in respect of certain capital assets of the county in the use of which the new county borough was formerly entitled to share. The adjustment of income and expenses, however, will be very complicated, the new county borough council having to undertake many new responsibilities in return for their future power of levying rates in the borough to the exclusion of the county council.

Where a county borough, by private Bill or provisional order confirmed by Act of Parliament, extends its boundaries by including the whole or part of a non-county borough or district, there will be a double adjustment, namely (1) with the county council, and (2) with the borough or district affected. [93]

In a financial adjustment under sect. 32 (3) of L.G.A., 1888 (*b*), between a county council and a county borough council, it was provided that regard should be had (1) to the previously existing property, debts and liabilities (if any) connected with the financial relations of the county and borough, (2) to the consideration that the county is not to be placed in any worse financial position by reason of the constitution of the borough as a county borough, or a county borough be placed in a worse position than if it had remained part of the county and had shared in the revenue produced by the local taxation licences, (3) to the amount of benefit and value of the services which the borough received in return for existing contributions (if any), and (4) to all the circumstances of each case which it appears equitable to consider. It is proposed to consider the matter under four headings (1) Exchequer grants and local taxation licences, (2) Capital assets and liabilities, (3) Cash balances and revenue assets and liabilities, and (4) Increase of burden. [94]

(1) *Exchequer Grants and Local Taxation Licences.*—By sect. 152 (1) (a) any adjustment of the proceeds of these is to be carried out in accordance with regulations made under sect. 108 (1) (b) of L.G.A., 1929, and for this purpose such regulations may extend to the proceeds of such licences. The regulations at present in force are the Local Government (Adjustment of Grants) Regulations, 1932 and 1934 (*c*). Strictly

(a) The Royal Commission on Local Government in 1925 recommended that all proposals for the constitution of county boroughs should in future be by private Bill, and s. 139 of L.G.A., 1933 (26 Statutes 379) forbids the promotion of such a Bill unless the population is 75,000.

(b) 10 Statutes 709.

(c) S.R. & O., 1932, No. 161; S.R. & O., 1934, No. 681.

speaking the adjustment of these grants is not a financial adjustment at all, as it does not take place between the councils affected but is a reapportionment by the M. of H. of the sums which the Exchequer would, but for the alteration, have paid to the undivided area. The same applies to local taxation licences, which if necessary may be pooled and reappropriated to the county and the county borough in fractions proportionate to the respective rateable values of the area transferred and the rest of the old area as diminished, though normally the position will be left that each county and county borough retain such proceeds of licences as they collect. [95]

SYSTEM OF GRANTS.—No detailed explanation of the system of Exchequer grants is attempted here, except in so far as is essential to a comprehension of the provisions as to adjustment on alteration of areas (see titles **GENERAL EXCHEQUER GRANTS** and **GRANTS**).

As a result of the derating and other provisions of the L.G.A., 1929, a considerable portion of the revenues of local authorities is paid to them direct by the Government. By sect. 86 (*d*) a large central fund or pool, called the "General Exchequer Contribution" was set up. Into this fund are paid direct out of moneys provided by Parliament, (1) an amount equal to the total losses on rates of all counties and county boroughs in the country on account of derating; (2) an amount equal to the total losses of all such counties and county boroughs incurred through the former percentage grants being discontinued; (3) a further sum, fixed for the first grant period at £5,000,000 a year, and by the L.G. (General Exchequer Contributions) Act, 1933 (*e*), for the second grant period which commenced on April 1, 1933, at £5,350,000 a year. [96]

The above fund is distributed throughout the country by a system of block grants. It is first apportioned amongst the whole of the counties and county boroughs of the country in accordance with an elaborate formula, the amount so apportioned to a county being called the "county apportionment," and the amount so apportioned to a county borough being called the "county borough apportionment." So far as the last named is concerned, there is no further subdivision, and the whole is retained and expended by the county borough council; the actual sum when paid is called the "General Exchequer Grant" of that council (*f*). But the county apportionment is expended partly by the county council itself, and partly by the councils of county districts within it.

The county apportionment, therefore, is subdivided, rules as to such subdivision being contained in L.G.A., 1929, Sched. IV., Part IV. (*g*). Briefly, a calculation is to be made, by which one-half of the total amount of the county apportionments for the whole of the counties in the country (except London) is divided by the aggregate estimated population of the whole of all counties aggregated down to the nearest penny. There is then allocated to a non-county borough or urban district a capitation sum equal to the capitation fee previously found multiplied by its estimated population in the appropriate year; a rural district receives the sum found by multiplying one-fifth of the capitation fee by its estimated population. Subject to possible additions and deductions which may be made to adjust gains and

(*d*) 10 Statutes 938.

(*f*) L.G.A., 1929, s. 95; 10 Statutes 943.

(*e*) 26 Statutes 289.

(*g*) 10 Statutes 984.

losses of areas owing to provisions of L.G.A., 1929 (*h*), these capitation sums, when paid, form the General Exchequer grant of the borough or district (*i*); the residue of the county apportionment, when paid, and after meeting capitation grants to county districts and certain other grants under sect. 92 of the Act to which reference is made later, forms the General Exchequer grant of the county (*k*). [97]

ADDITIONAL AND SUPPLEMENTARY EXCHEQUER GRANTS.—Further, under sect. 90 of L.G.A., 1929, provision is made for additional Exchequer grants to be paid to county councils if their county apportionments do not show a gain of a shilling per head of population. Naturally, if this result happens automatically, there is no need for further grants. But if it does not, a system of grants to adjust the position is provided. This only applies to counties and county boroughs, and is called the “Additional Exchequer Grant.” The additional Exchequer grants to county boroughs are dealt with in L.G.A., 1929, sect. 96.

In the case of counties, there is in the first place to be estimated the “standard sum,” which is the amount of the county’s loss through derating and discontinued grants with certain adjustments specified in sub-sect. (3). If, after adding to that sum the equivalent of one shilling per head of the estimated population, this produces a sum greater than that county’s county apportionment, the county is to receive the larger sum, and the deficit is paid by way of additional Exchequer grant. This is only for the first fixed grant period (*l*). In subsequent fixed grant periods, the deficit which is to be met by additional Exchequer grant is one between the county apportionment and the greater of the two following sums; either (1) one shilling per head of the estimated population, or (2) one-third of any increase in the county apportionment over that payable in the first fixed grant period. In the case of a county borough the same principle is applied, but the standard sum is differently calculated (*m*). [98]

Finally there is a grant designed to prevent loss, and a consequent rise in local rates, as a result of derating or of the change in the system of grants under the Act of 1929. This grant, known as the “Supplementary Exchequer Grant,” is made to county boroughs and to county districts direct, it being expressly provided by sect. 94 (1) (c) of the Act (*n*) that it is not to be paid out of the county apportionment (*o*). Briefly, if an area shows a loss as a result of the two stated factors,

(*h*) These provisions as to adjustment in respect of gains and losses so far as appear necessary for purposes of this article, are explained below under the heading of “Supplementary Exchequer Grants,” and on p. 53, *post*.

(*i*) L.G.A., 1929, s. 91; 10 Statutes 941.

(*k*) *Ibid.*, s. 89.

(*l*) The idea of fixed grant periods is to prevent stereotyping of grants, and obtain elasticity by frequent revision. The first fixed grant period is three years from April 1, 1930; the second, four years from April 1, 1933; and thereafter periods are of five years each; L.G.A., 1929, s. 86 (2); 10 Statutes 938.

(*m*) See L.G.A., 1929, s. 96 and Sched. V.; 10 Statutes 944, 985.

(*n*) 10 Statutes 943.

(*o*) *Ibid.* It is to be paid out of a fund contributed, as to one moiety by moneys provided by Parliament, and as to the other moiety by deduction from the capitation sums otherwise payable to county districts who gained, instead of losing, by reason of derating and the alteration in the system of grants introduced by the L.G.A., 1929, of contributions proportionate to the amount of any such gain; except that, by *ibid.*, s. 94 (1) (c) proviso, if the amount of the contribution of any particular district exceeds its capitation sum calculated as previously mentioned, the balance is to be paid out of moneys provided by Parliament.

its general Exchequer grant is to be increased by the allocation to it, out of the fund, of the full amount of the loss during a period of five years, and thereafter of a sum diminishing by one-fifteenth of the original sum each year until the full grant is exhausted at the end of nineteen years. If it shows a gain, a proportionate contribution thereof up to a limit of the whole capitation sum of the district will be deducted and retained in the fund out of which the grants in respect of losses are paid. The rules for calculating gains and losses are complicated in the extreme. As regards county boroughs they are contained in L.G.A., 1929, sect. 97 and Sched. V. (*p*); as regards county districts, in sect. 94 (1) and Sched. V. as altered by regulations made by the Minister under sect. 94 (1) (*d*) of the Act (*q*). In the case of a county borough if the area is altered careful provision is made for re-calculation; but since the aggregate of the new grants need not necessarily correspond with the old, this is not like a readjustment of the fixed county apportionment where the new aggregate of the reallocated grants to the new districts must correspond with the total of the old grant to the old district. It does not, therefore, amount to a financial adjustment between the two authorities, and is not further within the scope of this article.

Where a separately rated area is altered, the supplementary grant payable in respect of the losing area or the contribution deducted from the capitation grant in the case of a gaining area is adjusted between the authorities concerned, on the basis of rateable value.

[99]

ADJUSTMENT OF GRANTS.—Where an alteration consists of, or includes, the constitution of a new county or county borough, or otherwise affects the boundaries of a county or county borough, the following adjustments of grants are to take place.

The general Exchequer grant will be re-calculated so as to adjust the grants which will in future be received by each of the areas as altered, to what would have been received by each had the alteration taken place at the time when the original grant was calculated. For this purpose the two items of allowance for loss through derating and loss on account of grants of each county or county borough affected, are to be increased or reduced by (or, in the case of an entirely newly constituted county or county borough, are to be) such amounts as the M. of H. shall certify; and in such certificate he is to have regard to the losses on account of derating and alteration of grants, which he respectively estimates to be attributable in respect of the standard year (*r*) to the several areas added to or taken away from the county or county borough affected, or, in the case of a newly constituted county or borough, the area now included therein, but so that the aggregate amount of all such losses for all the counties and county boroughs affected remains unaltered (*s*). The losses on account of rates and grants of each authority affected as so increased, reduced or determined, are then to be used in future (so far as calculations of

(*p*) 10 Statutes 944, 985.

(*q*) *Ibid.*, 943. The regulations made are the Local Government (Adjustment of Gains and Losses in County Districts) Regulations, 1932 to 1935; S.R. & O., 1932, No. 281; 1933, No. 212; 1934, No. 682; 1935, No. 170.

(*r*) The "standard year" is from April 1, 1928, to March 31, 1929; see s. 134 of the L.G.A., 1929; 10 Statutes 971.

(*s*) Local Government (Adjustment of Grants) Regulations, 1932; S.R. & O., 1932, No. 161; para. 3 (1).

grants under L.G.A., 1929, are based on a calculation of such losses) in the calculation of grants payable in any fixed grant period commencing on or after the date of alteration, and, in the case of a county or county borough other than one newly constituted, are to be in substitution for the losses on account of rates and grants previously certified for such area by the Minister (*t*). The effect is that (1) in the actual fixed grant period in which the alteration takes place, the Minister simply certifies the value of the losses attributable to the transferred area, which is then deducted from the county or county borough apportionment of the diminished authority and added to that of the acquiring authority, or, if it is a wholly new county or county borough, becomes the amount of its loss for purposes of calculating grants; (2) in subsequent fixed grant periods, it becomes the item of loss in respect of that area which is to be taken into account in the reapportionment of the whole pool of general Exchequer contributions. [100]

The calculation of any additional Exchequer grant payable in a fixed grant period commencing on or after the date of the alteration is to take into account, in lieu of the standard sum previously determined for an area which becomes comprised in a county borough, a new sum certified by the Minister as being the new standard sum for the first fixed grant period for that county borough; and such new standard sum is to be the amount which the Minister estimates would have been determined as the standard sum for that county borough on the basis of the income and expenditure of the standard year, if the alteration had taken place on April 1, 1928 (*u*). Where the alteration takes place on a date other than the first day of a fixed grant period, the county or county borough apportionment and additional Exchequer grant (if any) of each county and county borough affected is, until the determination of the current fixed grant period, to be increased or reduced by, or, in the case of a newly constituted county or county borough, is to be, an amount newly certified by the Minister; and in assessing it, the Minister is to have regard (1) to the amounts previously certified as the losses on account of rates and grants of each of the counties and county boroughs affected, (2) to the certified new standard sum of each county borough affected, and (3) to the weighted population (*a*) of each of the counties or county boroughs affected as estimated by him on the assumption that the alteration took place on the first day of the appropriate year; but if the aggregate of the county and county borough apportionments and the additional Exchequer grants, calculated respectively solely by reference to the foregoing factors, exceeds or is less than the aggregate of the previously determined county and county borough apportionments and the additional Exchequer grants which would have been payable if there had been no alteration, the apportionment and grants included in the first-mentioned aggregate are to be reduced, or increased, as the case may require, to the amount of the second, and the reduction or increase is to be borne proportionately by the authorities affected.

If it is agreed by all the authorities concerned that no adjustment

(*t*) Local Government (Adjustment of Grants) Regulations, 1932; S.R. & O., 1932, No. 161, para. 3 (2).

(*u*) *Ibid.*, para. 3 (3).

(*a*) "Weighted population" means, in relation to any county or county borough, the weighted population calculated in accordance with the rules set out in Part III. of Sched. IV. to the Act; see s. 134; 10 Statutes 971.

is necessary, and they notify the Minister to that effect, he may, if he thinks fit, dispense with an adjustment (b). [101]

(2) *Capital Assets and Liabilities*.—As previously explained, there are usually comparatively few capital assets or liabilities wholly transferred from the county on the constitution or enlargement of a county borough. There may, however, be property such as court houses, police stations, schools, hospitals, asylums, houses acquired for occupation by police officers or school teachers, etc., land, bridges, street improvements and other items. These may roughly be divided into revenue-producing, e.g. houses, and non-revenue-producing, e.g. court houses, police stations, etc. Revenue-producing properties are obviously a subject for adjustment, but non-revenue-producing properties may or may not be. For such as are adjustable and for revenue-producing properties transferred, the county will claim an allowance, usually on a capital basis either of cost or of replacement value; and in respect of a share in similar properties retained by the county where before the alteration the borough enjoyed its use in common with the rest of the county, the borough will claim a capital sum equal to the value of such share estimated on comparative rateable values, "user," or population. The same principles exactly are applied in respect of loans incurred in respect of the acquisition of such assets; if the loan was incurred wholly in respect of an asset transferred, the Act or order will usually direct that the asset shall vest in and be transferred to the borough council subject to the liabilities exclusively attaching thereto and subject to any necessary adjustment.

As regards non-revenue-producing assets, no definite line of demarcation has been laid down, but each case must be considered on its merits. Some, such as courts of justice and offices, judges' lodgings and court houses, are regarded as not being proper subjects of adjustment, on the ground that no borough is deprived, by its exclusion from the county, of the benefit arising from the use of the premises, nor are they realisable assets. These considerations also apply to county halls used for assizes, but it has been decided that where county offices are erected and paid for partly by a loan and partly out of grants which would otherwise have gone in relief of rates levied in the county, so that the balance of the value of such offices over the current amount of loan debt has been contributed by the county as a whole, a county borough, upon the inclusion therein of a part of the county, can claim a share in the net value of such offices if the county retain them (c). If the alteration entails one or other of the new authorities having to provide separate accommodation for rate-aided persons of unsound mind, the Act or order will probably provide for the transfer or retention of the mental hospital to or by the other authority, and the deprived authority will be entitled to claim for a share in the value of the building in view of their deprivation of the right of beneficial user (d). If a capital asset is retained by the diminished authority but will continue to be used by both authorities, the diminished authority will possibly have to allow to the acquiring authority by way of set-off, an estimated sum in respect of the benefit accruing to them by the retention of the works or other asset; but they will be allowed to claim in respect

(b) Local Government (Adjustment of Grants) Regulations, 1932, para. 3 (4).

(c) *Re Southampton County Council and Bournemouth Borough Council*, [1922] 2 K. B. 314; 33 Digest 27, 129.

(d) The Commissioners under the Act of 1888 recommended this; see Cmd. 2506, p. 261.

of any increase of burden caused through losing the contribution of the transferred area to loan charges (e). [102]

Claims in respect of the adjustment of capital assets are usually set out by each side with particulars in a schedule; the net amount will be payable as a capital sum by the council against whom the balance falls. The schedules will set out particulars of cost, debt originally contracted, outstanding debt, and any other information necessary to arrive at the value of the asset. The basis of value claimed is sometimes cost, sometimes replacement value; the basis of division is sometimes the share of user of which the severed area has been deprived, and sometimes a proportion based on the respective populations or rateable values of the areas affected. Much depends on the circumstances of each case. The same principles apply to an adjustment of capital loan debt, which is generally adjusted on rateable value, but in particular cases it may be adjusted on the same basis as has been adopted in respect of the adjustment of the asset in respect of which the loan debt was incurred, in cases where the asset in question is in future to be shared. [103]

(3) *Cash Balances and Revenue Assets and Liabilities.*—This part of the adjustment is usually dealt with by a schedule setting out the matters current at the appointed day, such as cash balances, revenue debits and credits, rate precepts outstanding, etc., and is not a matter of much difficulty. The value of equipment, tools, materials and other assets acquired out of revenue is also brought into account. The ultimate balance arrived at in favour of, or against, the borough is settled as a capital sum. [103A]

(4) *Increase of Burden.*—The exact nature of the allowance for increase of burden, and the conditions which gave rise to a claim for such an allowance under the L.G. (Adjustments) Act, 1913, were very clearly explained by ATKIN, J., in the case of *Queenborough Corporation v. Sheppey R.D.C.* (f). “Where an area has been taken, the fact that in respect of that area the ratepayers therein had been contributing more than the amount of the expenditure upon it could not (as a result of the decision of the House of Lords in the *Caterham Case*, ante, p. 41) be taken into account in adjusting the financial relations of the two authorities. The result was that in ordinary circumstances a further burden would be thrown upon the ratepayers of the remaining area, as they would have to meet the total remaining expenditure without having the benefit of the contribution by the ratepayers of the taken area which was in excess of the expenditure which they had been saved by having that area taken away. The House of Lords decided that that was not a matter proper to be taken into consideration, and the result was that in some, probably in the majority of, cases, when an area is taken away, if the expenditure which is saved to the remaining part is less than the amount which the ratepayers were spending, with other things remaining equal, a further burden would be thrown upon the ratepayers of the remaining area because they would have to pay a larger sum in the pound to meet it; in other words the expenditure remaining constant would fall upon a smaller body of ratepayers.” As a result of the Act of 1913, “it appears to me . . . that if after an alteration of boundaries a council has, in order to carry out

(e) *Queenborough Corpn. v. Sheppey R.D.C.*, [1915] 1 K. B. 356; 33 Digest 27, 128.

(f) *Ibid.*, at p. 362.

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the services which it has to perform, to levy an extra rate per pound upon the remaining ratepayers for the services which it renders to them, that is an 'increase of burden' which has to be taken into account and dealt with." [104]

The rules for determining the sum to be paid under this head, are now contained in the Fifth Schedule to L.G.A., 1938 (g). The arbitrator is directed to have regard (i.) to the difference between the burden on the ratepayers which will properly be incurred by the diminished authority in meeting the cost of executing any of their functions after the date on which the alteration takes effect, on the one hand, and the similar burden which would have been incurred if there had been no such alteration, on the other hand ; and (ii.) to the length of time during which such increase of burden may be expected to continue. There is a limitation on this, in that no alteration of income in consequence of an apportionment (h) of Exchequer grants under regulations made under sect. 108 (1) (b) of the L.G.A., 1929, is to be taken into account. By para. (2) it is provided that the capital sum to be paid in respect of increase of burden is not to exceed (1) where and so far as the increase of burden is attributable to the cost of maintenance of roads, the average annual increase of burden multiplied by 21, and (2) where the increase is in respect of any other items, the average increase multiplied by 15. These limits are maxima only and by no means an invariable test ; it was stated in evidence before the Royal Commission on Local Government in 1925 that only in very few cases would the full maximum number of years' purchase be awarded on individual items (i), though actually the net burden claim as a whole is usually estimated and multiplied by the fixed maxima. The maximum multiplier of 21 in the case of roads, however, represents an increase over the maximum of 15 previously applicable to this item also. It was first imposed by the L.G. (County Boroughs and Adjustments) Act, 1926 (k), which was passed as a result of the recommendations of the Royal Commission on Local Government.

So far as county boroughs are concerned, they are the highway authority for all highways in the borough. A county council are the highway authority for (1) all highways in rural districts, (2) all classified roads in non-county boroughs and urban districts, (3) main roads maintained by them before L.G.A., 1929, and (4) roads in a rural part of an urban district for which they are liable by reason of an order made under ss. 31 (6) and 37 (1) of L.G.A., 1929. On the formation of a county borough, therefore, there is a reapportionment of highway functions. When the proportions of the former highway functions of the old area which will in future be performed by each of the two new authorities have been ascertained, and exactly how the necessary expenditure thereon corresponds respectively with the rateable values of the new authorities is known, it will probably be found that one authority is gaining and the other losing as a result of the alteration. The loss in rates which the losing authority suffers by losing the surplus over expenditure gained by the gaining authority, is the increase of burden, and the losing authority can claim this up to a maximum of 21 times the average annual loss. [105]

(g) 26 Statutes 507.

(h) *Ante*, p. 46.

(i) Cmd. 2506, p. 261, quoting memoranda prepared by Mr. W. B. Keen and Mr. A. Collins.

(k) 10 Statutes 878.

A schedule containing the following statistics will be prepared. (1) A table showing the population and rateable values of (i.) the former district as undivided, (ii.) the area transferred, (iii.) the old area as diminished, and (iv.) the percentage of reduction which thus takes place in population and rateable value respectively; (2) the mileage of roads (i.) in the district as undivided, and (ii.) in the area transferred, and the percentage which the last named bears to the whole; (3) an analysis of the income and expenditure (i.) on the roads of the whole of the old district, and (ii.) on the roads of the area transferred, showing what percentage of the total income was contributed by the area transferred and for what percentage of the total expenditure its roads were responsible; and (4) a table summarising the whole, showing the probable total of rates which, from the foregoing data, will in the transferred area be available for maintenance of roads, and the expenditure which on the same data will annually be incurred on them. The difference is the increase of burden, and will be capitalised and claimed. [106]

(5) *Other Items*.—The following description of the proceedings on an adjustment following the extension of a county borough is taken from the First Report of the Royal Commission on Local Government in 1925 (1). “Usually separate claims are prepared in respect of (1) general county purposes, (2) police, (3) higher education, (4) elementary education, and (5) sometimes other separate departments of expenditure. The claim usually sets out, first, a preliminary table of statistics of the areas affected as to population, rateable value, etc.; secondly, tables containing detailed analyses of the income and expenditure for a series of years in respect of each of the accounts of the county council as above set out, the period usually including at least three pre-war years, and each subsequent year down to that last preceding the appointed day. These tables are given in order to furnish a means for the consideration of what in respect of each item of expenditure would be a fair method of arriving at normal expenditure for the purpose of the adjustment of burden.

“Then follows, thirdly, the burden claim in respect of each of the separate accounts, and in this the normal expenditure and income arrived at from a consideration of the figures in the preceding table and from other relevant facts are set out, and the rateable contribution of the severed area to such expenditure after deducting the rateable share of income. The amounts thus arrived at are submitted as representing the loss of contribution sustained by the county council from the severed area. Against this is set the estimated saving in expenditure by the county council after the severance in respect of the administration of the severed area under the same items, *e.g.* (i.) the cost of main roads in the transferred area after deducting the proportion of such cost which is borne by the Exchequer contribution account as previously stated (*m*), (ii.) any savings in salaries and administration expenses by reduction of staff or of salaries of officials, (iii.) reduction in hospital charges by removal of patients from the severed area, (iv.) reduction of police expenditure in cases in which the borough has a separate police force and will police the severed area, (v.) reduction in education expenses, both higher and elementary,

(1) August 7, 1925, Cmd. 2506, pp. 273—275.

(*m*) The Report was issued before L.G.A., 1929, under which payments in respect of main roads out of the Exchequer Contribution Account disappeared.

in respect of schools and other educational institutions in the severed area and contributions to secondary schools in the severed area after allowing for any grants received, (vi.) any other savings.

"Deducting the net savings from the net loss of contributions, the annual burden is computed and capitalised at such number of years, not exceeding fifteen (*n*), as is considered suitable having regard to the permanence or otherwise of the burden in the case of the respective items of which it is composed. Where the whole or a part is claimed by way of annuity, the amount and period of the annuity corresponding with the burden is shown. [107]

"Innumerable questions inevitably arise, according to the circumstances of each case, upon the items constituting a burden claim, both as to the expenditure to be brought into account and the savings that will be effected, and as to the period or permanence of the burden.

"In some cases a claim may be made by the borough council for a set-off where there will in any respect be a burden upon the borough in consequence of the administration of, or addition to, its area. This also involves controversy.

"A separate claim may arise for compensation payable by the county borough council to officers of the county council who are displaced, or whose remuneration is reduced, in consequence of the reduction of area or alteration of duties consequent thereon. . . .

"The claim is finally summarised under the foregoing heads of Exchequer contribution adjustment (*o*), adjustment of capital assets and liabilities, revenue assets and liabilities, and burden claim; and the net amount payable or receivable is shown, and may be claimed as a net capital sum or as an annuity, or partly in one way and partly in the other.

"Interest is claimed as from the appointed day or from some later date, and the claim is then rendered, and becomes the subject of investigation and negotiations, leading either to settlement by negotiation or by arbitration.

"After settlement of the claim any capital sum payable by one authority to the other is usually raised by loan for such period as may be sanctioned by the Minister of Health, and any amount received by an authority is applied in such manner as may be approved by the Minister, *e.g.* by investing and applying the income as revenue, or by paying off debts having suitable periods to run, or by expenditure for capital purposes in lieu of borrowing." [108]

By sect. 151 (2) of L.G.A., 1933 (*p*), any sum payable in respect of a financial adjustment may be paid by way of a terminable annuity for a period not exceeding that allowed by the M. of H. (*q*), and in the case of a sum payable in respect of increased cost of maintenance of county roads is to be so paid in the absence of agreement to the contrary (*q*); in such a case, by virtue of L.G.A., 1933, Sched. V., para. (2) the capitalised value of the instalments or annuity paid is not to exceed the maximum amount of increase of burden allowed by that schedule (*r*).

It should be made clear that adjustment of loan debts is made on a capital basis, and not by way of increase of burden. The maxima

(*n*) This was altered by the Act of 1926; see p. 50, *ante*.

(*o*) This item is not correct since L.G.A., 1929.

(*p*) 26 Statutes 389.

(*q*) L.G.A., 1933, Sched. V., para. (3); 26 Statutes 507.

(*r*) See *ante*, p. 50.

of fifteen and twenty-one years' purchase, therefore, do not apply to these, and, if the loan has a longer period to run, none the less the whole burden of payment of future instalments will be transferred or adjusted by apportionment of the outstanding debt at the appointed day (s). [109]

Adjustments affecting Non-County Boroughs and Districts. (1) *Exchequer Grants.*—As previously explained, in any adjustment of areas where a county borough is either the increased or the diminished area, the adjustment of grants takes place between it and the county to whom it cedes, or from whom it takes, additional territory, because what is adjusted is the first distribution of General Exchequer Contribution into county and county borough apportionments, with which only those two authorities are concerned. But as also explained, there are Exchequer grants made out of the county's apportionment to the county districts, so that there may be, without affecting the homogeneity of the county as a whole, an internal rearrangement of areas which affects grants received out of the county apportionment. [110]

GENERAL AND SUPPLEMENTARY EXCHEQUER GRANTS.—Regulations issued by the M. of H. provide that where the alteration affects a county district, the capitation sum in respect of the altered area is to be re-calculated (or calculated, if it is a newly formed borough or district) as if the alteration had fallen on April 1, 1928, if the alteration takes place in the first fixed grant period, or of the last year of the preceding fixed grant period in any subsequent one. For the purpose of this regulation, a separately rated area transferred is to be deemed to be a separately rated area in the rating area to which it is transferred; and where a separately rated area is divided, and part only transferred or different parts transferred to different authorities, each such part is to be deemed to be a separately rated area and the "adjusting amounts" under sect. 94 of L.G.A., 1929, are apportioned on the basis of rateable value (t).

Additional Exchequer grants do not affect county districts. [111]

SPECIAL PROVISIONS AS TO RURAL DISTRICTS.—Where in the standard year a special or parish rate is levied in any area within a rural district, the loss in that rate incurred through de-rating is to be ascertained (u) in accordance with rules set out in L.G.A., 1929, Sched. IV., Part I., and compensation (a) is to be paid to the R.D.C. for such loss. To effect this, (1) the sum to be set aside out of the county apportionment in respect of that rural district and payable to the R.D.C. is, in respect of each year during the first four fixed grant periods, to be increased by a sum equal to the appropriate percentage of the loss of the area on account of the special or parish rate, and (2) there is to be payable to the R.D.C. by the county council, in each

(s) See First Report of Royal Commission on Local Government, 1925, Cmd. 2506, p. 300.

(t) By the joint effect of the Local Government (Adjustment of Grants) Regulations, 1932 and 1934; S.R. & O., 1932, No. 161, para. 4, and 1934, No. 681, an adjusting amount means, in relation to any separately rated area, the amount which in any year, in accordance with L.G.A., 1929, s. 94 (1), *ante*, falls to be added to, or, but for the proviso to sub-para. (ii.) of para. (c), deducted from, the capitation sum of the council of a county district in respect of that area.

(u) *Ibid.*, s. 92; 10 Statutes 941.

(a) "Compensation" is the word used in the Regulations of 1932 to define any sum payable to an R.D.C. under s. 92 of *ibid.*, and it is used with this special meaning throughout this paragraph.

year during the first and second fixed grant periods, a sum equal to 25 per cent. of that loss, and thereafter such sum as the county council may determine (*b*). This compensation to the R.D.C. is to be applied by them to such purposes and in such manner as may be prescribed (*c*). Where after April 1, 1930, there is an alteration involving a rural district where any such compensation is being paid, any portion thereof which is being paid in respect of an area wholly or partly transferred must, where the area in question is transferred to an urban area and ceases to be rural, cease to be payable from the date of the alteration (*d*). In any other case involving a rural district, so far as the compensation is payable in respect of the year in which the alteration takes effect and of any subsequent year within the same fixed grant period, and is payable on account of any area which continues to form part of a rural district, it is to be payable, as from the date of the alteration, to the R.D.C. of the rural district of which the transferred area thereafter forms a part, and is to be applicable as compensation payable to the council of that rural district (*d*). The annual amount so applicable is thereafter to be taken into account in calculating the compensation payable to the R.D.C. in subsequent fixed grant periods. But where a separately rated area is not wholly transferred from a rural district, any compensation payable in respect of that area is to be apportioned between the various parts of the area in proportion to their comparative rateable values, and the amount so apportioned to any part then becomes its compensation, provided, of course, that it continues in a rural district (*d*). [112]

MATERNITY AND CHILD WELFARE GRANTS.—There is a further grant which may fall to be adjusted on an alteration of boundaries or authorities. Where any county contains a county district whose council have established a maternity and child welfare committee under the Maternity and Child Welfare Act, 1918 (*e*), the Minister is, before the beginning of each fixed grant period and after consultation with the councils of the county and county district concerned, to make a scheme for increasing the sum to be set aside out of the county apportionment in respect of the district, by such amount as he thinks fit, having regard to the expenditure which will be defrayed by the council upon services in connection with maternity and child welfare; and where such a scheme is made, the sum to be set aside out of the county apportionment in respect of the district is to be increased accordingly (*f*). Where the council of a county district affected by an alteration of boundaries or otherwise is a council carrying out services under the Maternity and Child Welfare Act, and whose general Exchequer grant has been increased in accordance with a scheme so made, the Minister may, on the alteration taking effect and after consultation with the council of the county and the county district, make such modifications of that scheme as he considers necessary (*g*). [113]

The position may also be affected by a change of authority. Under sect. 60 of L.G.A., 1929 (*h*), if maternity and child welfare services are being provided by a council who are not the local education authority,

(*b*) S. 92 (1) (*b*); 10 Statutes 942.

(*c*) S. 92 (2).

(*d*) Local Government (Adjustment of Grants) Regulations, 1932, para. 4 (4).

(*e*) 11 Statutes 743.

(*f*) L.G.A., 1929, s. 93; 10 Statutes 942.

(*g*) Local Government (Adjustment of Grants) Regulations, 1932, para. 4 (5).

(*h*) 10 Statutes 924.

and the Minister, upon representations being made to him by the local education authority, is satisfied that the transfer of these functions to them would conduce to the more efficient administration of the functions relating to public health and education, he may by order withdraw his sanction to the arrangements under which the council who are providing the services are operating, and provide for the transfer of the services to the local education authority. An order so made may apply, with the necessary modifications, any of the provisions of L.G.A., 1929, relating to the transfer of property and liabilities and the transfer, superannuation and compensation of officers. No provision is made by sect. 60 for financial adjustments, but a further adjustment of grant is provided for by the regulations, and where the Minister has ordered the transfer as from some date after the commencement of a fixed grant period, of services under the Maternity and Child Welfare Act from a county council to the council of a county district, the sum to be set aside out of the county apportionment in respect of that area is, as from the date of transfer to the end of that fixed grant period, to be increased by such amount as the Minister certifies; and in certifying, the Minister is to have regard to the expenditure which will be defrayed by the borough or district council upon the services (*i*). The regulation expressly provides, however, that the effect of any such change is not to be taken into account for the purpose of calculations or adjustments of supplementary Exchequer grants under sect. 94 of L.G.A., 1929 (*k*). [114]

(2) *Capital Assets and Liabilities*.—The same principles apply with respect to these as in the case of the county council and county borough, but, of course, the subject-matters are different. When a part of a county district is absorbed by a county borough, or by another borough or district, or is constituted a separate rating authority, the order will usually provide that all property or liabilities which immediately before the appointed day were vested in the diminished authority in relation exclusively to the part transferred or any part thereof, are to be transferred to and vest in the acquiring authority, and it was also formerly usual to insert a provision that any property or liabilities vested in or attaching to the diminished authority in relation to the whole or part of the transferred area conjointly with any other area, was to be a matter for adjustment, but this last provision is now omitted in orders, no reference to financial adjustment being considered necessary where sect. 151 of L.G.A., 1933, applies.

From the appointed day, therefore, the acquiring authority take over all capital assets which were previously used for the exclusive benefit of the transferred area. These will probably not include the offices where the borough or district is not wholly absorbed, as these would be used for the transferred area conjointly with other parts of the old area; the same applies to, *e.g.* isolation hospitals and water-works, and these will be adjusted on the principles already stated. The largest item will probably consist of assisted housing schemes, and there will be considerable capital adjustments if such assets as sewage disposal works, gas and water undertakings, and cemeteries are transferred. [115]

(3) *Cash Balances and Revenue Assets and Liabilities*.—These adjustments are not difficult, and are simply a matter of arriving at

(i) Local Government (Adjustment of Grants) Regulations, 1932, para. 5.

(k) 10 Statutes 942.

the right figures (see *ante*, p. 49). Any loose equipment and materials will be taken over at a valuation and included in the financial adjustment. [116]

(4) *Increase of Burden*.—The position as to roads varies as to whether the districts affected are rural districts, boroughs or urban districts. Rural district councils are not highway authorities at all; councils of non-county boroughs and urban districts are the highway authority for non-classified roads; and county borough councils are the highway authority as regards all roads. If, therefore, a county borough absorbs part of a rural district, there is an adjustment as to roads only between the county borough and the county. If part of an urban district is taken in, there is an adjustment between the county borough and the county as regards classified roads, and the county borough and the urban district as regards non-classified roads. If an urban district is formed out of part of a rural district, there may be an adjustment with the county over non-classified roads, but apart from the question of Exchequer grants comparatively little is needed if a rural area is formed out of an urban area. The principles of adjustment have been stated, but there is an important provision in sect. 117 (4) of L.G.A., 1929 (l) with respect to adjustments as to roads made before the transfer of highway functions effected by that Act. The subsection provides that where there had been a recent adjustment in which provision had been made for compensation to be paid to the losing authority for increase of burden in the maintenance of roads of which burden the Act relieved them, so much of any such sum paid or payable under the adjustment, as had not on the appointed day been exhausted, or applied in or towards the discharge of liabilities transferred to the county council under the section, or which would have been transferred if undischarged, was to be repaid (1) in the case of a sum paid or payable by one county district council to another where both were in the same county, to the council who had paid it, and (2) in any other case, to the county council. For the purpose of arriving at the exhausted portions unless the arbitrator for special reasons otherwise determined, the sum was to be deemed to be exhausted at the end of twenty years, so that the difference between the sum to be returned and that originally paid would be a sum equal to that number of twentieth parts which corresponded with the number of years which had expired since the day on which the alteration of areas took effect. The amount might be fixed by agreement or by arbitration.

In awarding in the year 1932 compensation to an R.D.C. in respect of increase of burden in the maintenance of roads consequent on the extension of a borough in 1928, an arbitrator must have regard to the fact that the rural council ceased to be a highway authority on April 1, 1930, and the compensation must be limited to the two years between April, 1928, when the alteration of area took effect, and April, 1930 (m). [117]

(5) *Other Items*.—These will be adjusted as indicated, *ante*, p. 52. Naturally the items may be very numerous and may vary considerably in the case of different authorities. Probably one of the most important will be compensation to officers.

(l) 10 Statutes 958.

(m) *Godstone R.D.C. v. Croydon Corpn.* (1933), 102 L. J. (K. B.) 34; Digest (Supp.).

The sum found to be due on the balance after taking into account all claims on either side, will usually be paid in a capital sum, although it may be agreed that it shall be settled by instalments as in the case of county boroughs. [118]

Adjustments on Parish Alterations.—The same general principles apply as in the case of districts, and there appears to be nothing which needs special mention. [119]

London.—During the past twenty years the only alterations of areas in London have consisted of the amalgamation of parishes in a metropolitan borough so that the borough shall not comprise more than one parish. These amalgamations have usually been made by orders of the L.C.C. under sect. 57 of the L.G.A., 1888 (*n*) confirmed by the M. of H. Usually the property and liabilities of the parishes so united have been pooled and no need for a financial adjustment has arisen. But if occasion arose for an alteration of the County of London, this could be effected by a provisional order of the M. of H. under sect. 54 of the Act of 1888 (*o*), and any consequent adjustment could be made under sect. 62 of that Act (*p*), as the provisions of the L.G.A., 1933, as to alterations of area and financial adjustments do not extend to London.

The Exchequer grants payable in London are, however, governed by sects. 98 to 100 of L.G.A., 1929 (*q*), and if occasion arose the M. of H. could adjust the grants so as to correspond with an alteration of the County of London, or any area within that county. [120]

(*n*) 10 Statutes 732.

(*p*) *Ibid.*, 736.

(*o*) *Ibid.*, 730.

(*q*) *Ibid.*, 945.

FINANCIAL OFFICER

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See also titles :

ACCOUNTS OF LOCAL AUTHORITIES ;
BOROUGH ACCOUNTS ;
CHAMBERLAIN ;
COUNTY ACCOUNTS ;
FINANCE ;
FINANCE COMMITTEE ;
FINANCE DEPARTMENT ;

FINANCIAL STATEMENT ;
OFFICERS OF LOCAL AUTHORITIES ;
RURAL DISTRICT COUNCIL ACCOUNTS ;
SUPERANNUATION ;
TREASURER ;
URBAN DISTRICT COUNCIL ACCOUNTS.

The complete list of financial titles is given under the title FINANCE.

Introductory.—The chief financial officers of councils are known by a variety of names, of which the most usual are treasurer, accountant and chief financial officer. The most popular title is that of treasurer, since every council are required to appoint a treasurer (see *post*), and as this officer has certain statutory duties to perform it is generally

considered that the accountant and chief financial officer should also be treasurer and hold that title.

The style of accountant was prevalent in former years and was the result of the gradual development of the work and responsibilities of local authorities. Formerly, when the work of a council was limited, the duty of supervising the accounts tended to devolve upon the clerk, but as the appointments of clerk and treasurer could not be held by the same individual, a separate appointment of a treasurer was made. Frequently a bank manager was selected. The continual increase of the work of the councils led to the appointment of a separate officer to keep the accounts, and as the office of treasurer was already filled by the bank manager or other person, the officer who was responsible for keeping the accounts was styled the accountant. As occasion permits, generally by reason of the resignation of a treasurer, the accountant is given the statutory title of treasurer, and is then known by this title, or occasionally by a combination of the two, such as treasurer and accountant. Some authorities have, however, preferred to retain the separate offices.

Occasionally the chief financial officer is termed the chamberlain. In some instances the term "comptroller" is used, but this is generally in conjunction with some other title, *e.g.* treasurer and comptroller. See also the title CHAMBERLAIN.

Probably as a result of these variations in the nomenclature of accounting officers, the M. of H. determined to describe the officer as the chief financial officer, and this title is used in the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (*a*), and generally in departmental publications. [121]

Appointment.—The appointment of chief financial officer is made by the council. Where the appointment is that of county treasurer, the authority for it is sect. 102 of the L.G.A., 1933 (*b*), which enacts that every county council shall appoint a fit person to be county treasurer and may pay the person so appointed such reasonable remuneration as they may determine. The office is held during the pleasure of the council in the absence of a special agreement (see *post*, p. 59), but a vacancy in it must be filled within four months. The office of clerk of the county council and county treasurer cannot be held by the same person, or by persons who stand in the relation to one another of partners or of employer and employee (sect. 102 (*4*)).

If the chief financial officer is not also county treasurer, the appointment of the former is made under sect. 105 (1) (*c*), which allows a county council to appoint such other officers as they may think necessary for the efficient discharge of the functions of the council. [122]

The treasurer of a municipal borough is appointed under sect. 106 (1) of the L.G.A., 1933 (*c*), and the conditions governing the appointment resemble those of the county treasurer, except that a vacancy in the office must be filled within twenty-one days of its occurrence. The same subsection gives the authority for the appointment of such other officers as the borough council think necessary, and would therefore include the appointment of a borough accountant in the event of the borough treasurer being a person other than the chief financial officer. The appointment of treasurer by an urban or rural district council is authorised by sect. 107 of the L.G.A., 1933, and similarly the section also enables the appointment of an accountant as in the case of a borough.

Generally, vacancies are advertised in the service journals and occasionally in the daily papers. In other cases a subordinate officer already serving in the finance department is selected; see also title **TREASURER.** [123]

Qualifications.—There are no statutory qualifications for the appointment of a chief financial officer. Although appointments are sometimes made solely on the basis of an applicant's administrative ability and technical experience, it is usually considered desirable for the officer to have a diploma of certain professional organisations. The Institute of Municipal Treasurers and Accountants examines candidates who are already serving in a finance department, and the subjects taken correspond with the candidates' professional duties. The Institute of Chartered Accountants and the Society of Incorporated Accountants and Auditors conduct examinations which thoroughly test the candidate's proficiency in accountancy and auditing. Membership of one of the latter bodies is a valuable additional qualification. Degrees in economics and diplomas in public administration are also recognised as qualifications which may carry weight in selecting a financial officer. As to qualifications of local government officers in general, see the Report of the Departmental Committee on Qualifications, Recruitment, Training and Promotion of local government officers (*d*). See also title **OFFICERS OF LOCAL AUTHORITIES.** [124]

Tenure of Office and Dismissal.—Unlike some officers, such as the M.O.H., the appointment of a financial officer is not subject to the confirmation of the M. of H. or other Government department, and he has not that security of tenure which is afforded by the necessity to his dismissal of a consent by some central authority. It follows that the officer can be dismissed whenever the council so decides, but as the contract of service is usually made subject to three months' notice on either side, that notice is usually necessary to terminate the appointment. Under sect. 18 (2) of the Municipal Corpsns. Act, 1882 (*e*), a borough treasurer, and under sect. 189 of the P.H.A., 1875 (*f*), the treasurer of an U.D.C. held his office at the pleasure of the council. It was decided in *Brown v. Dagenham U.D.C.* (*g*) that where an officer held office under an enactment in these terms, the council and the officer could not contract so as to take away the right of the council to dismiss him at pleasure. But the law has been amended by sect. 121 of the L.G.A., 1933 (*h*), which allows provision for a reasonable notice by either party in a contract of service, and validated any such provision in a contract purporting to be in force on June 1, 1934. Treasurers or financial officers appointed under the L.G.A., 1933, may therefore contract with the council for reasonable notice before their service is brought to an end, although the section of that Act under which an officer was appointed provides that he shall hold office during the pleasure of the council.

The Departmental Committee in referring to tenure of office indicated that it was important that the principal officers of local authorities should feel free to express their opinions on all matters

(*d*) Report to the M. of H., 1934, No. 32—306. H.M. Stationery Office. Price 1s. 6d. See particularly, pp. 20, 34, 36, 43.

(*e*) 10 Statutes 582. Repealed by L.G.A., 1933.

(*f*) 13 Statutes 707. Repealed by L.G.A., 1933.

(*g*) [1929] 1 K. B. 737; 93 J. P. 147; Digest (Supp.).

(*h*) 26 Statutes 370.

with which they are concerned without fear of the consequences, but that they were not satisfied that there was any case for extending the security of tenure enjoyed by Medical Officers of Health and certain other officers. In point of fact, however, it is seldom that the financial officer is dismissed from the service of a council, except in cases of neglect or duty or dishonesty.

The post of financial officer is occasionally terminated by a change in the status of the employing council; thus boroughs or urban districts may be amalgamated, or a borough may be extended by the inclusion of an urban district. In such cases compensation for loss of office is payable to the displaced officer under the Act or order authorising the amalgamation or extension. [125]

Functions.—The duties of a treasurer are not prescribed in detail by the L.G.A., 1933, but para. 4 (1) of the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (*i*) imposes on the chief financial officer the responsibility for the punctual keeping of a balancing system of double-entry ledger accounts including all transactions which should be recorded in the accounts of the council, and this is followed by a description of the books and accounts which are to be kept. The regulations also require the chief financial officer, as soon as may be after the close of each year, to present to the council the final ledger accounts duly balanced. Somewhat similar provisions are contained in Art. 3 of the Rate Accounts (Borough and Urban District Councils) Order, 1926 (*k*). The duties and responsibilities of the borough treasurer were referred to in the case of *A.-G. v. De Winton* (*l*). There a burgess sought to prevent the treasurer paying interest on bank overdrafts, and in the course of his judgment FARWELL, J., said: "The defendant's plea that he was not personally liable because he had acted throughout as the servant of the borough council, was not well founded. The borough treasurer is not merely the servant of the borough council. The borough fund is a trust fund, and the treasurer has the custody of it and stands in fiduciary relation to the burgesses as a body in respect of it. He is bound to disobey any order of the council calling upon him to employ the fund for an unlawful purpose."

Generally it may be said that a financial officer is required to organise and supervise the work of the finance department, to carry out the directions of the finance committee, and to prepare certain financial returns to Government departments. Most councils have framed financial regulations which set out in some detail the duties of the financial officer, and among these the most important are usually as follows:

1. To keep the council's accounts and to submit them to audit.
2. To prepare estimates for the making of a rate and to advise the finance committee as to the rate to be levied.
3. To submit periodical returns of income and expenditure in comparison with the estimates.
4. To submit to the finance committee the capital requirements of the various spending committees and to advise that committee thereon.
5. To advise upon loans for capital expenditure.
6. To receive all cash payable to the council.

(*i*) S.R. & O., 1930, No. 30.

(*l*) [1906] 2 Ch. 106; 33 Digest 77, 497.

(*k*) *Ibid.*, 1926, No. 1178.

7. To pay all accounts and charges payable by the council.
8. To organise and control an efficient system of internal audit.
9. To prepare an abstract of accounts at the end of the financial year.
10. To carry out such other duties as he may from time to time be required to undertake. [126]

The actual duties vary considerably with different authorities. Some require the financial officer to be responsible for the accounting organisation of all trading undertakings, while others provide separate accountancy officers for such services, and yet others treat services such as education as independent of the financial officer's activities (see title FINANCE DEPARTMENT), but there is a growing realisation that efficient financial organisation requires that all accounting services shall be under the control, and subject to the supervision, of the chief financial officer. Whether or not he is personally responsible for the actual control of all accounting work, the chief financial officer should have authority to co-ordinate the accounts which are to be kept, the methods to be applied, and the form in which they are to be presented. He should also be required to organise an internal audit system which should supervise all accounting officers, whether or not such officers are subject to his control, although it should be mentioned that some authorities consider that such a check should be carried out independently of the Finance Department. [127]

Financial Officer as Financial Adviser to the Local Authority.—From the foregoing it will be seen that the duties and functions of the financial officer so far as they are prescribed by statute, or regulated under statutory powers, suggest that his official capacity is that of a paymaster and accountant of the local authority. Where these are enlarged, as in practice they usually are, by standing orders or financial regulations, he may be made responsible for a supervision of the financial transactions of all departments in the character of an internal auditor and, in a special sense, be regarded as the chief officer of the finance committee which acts as a clearing house through which the requirements of all other committees of the authority for finance are collated for submission to the council with a report of the finance committee as to the financial effect of the requisitions made.

The importance of finance in local administration, however, has in recent years made it necessary that the financial officer should function as a general financial adviser to the local authority, and this responsibility is being increasingly required of him.

It is not possible to indicate all the duties that may be imposed on a financial officer in the exercise of this function except by a general statement that wherever considerations of finance might affect the policy of a local authority the financial officer would be required to advise on their scope.

An illustration of the enlarged scope is afforded by the modern practice of adopting provisional programmes of expenditure, both capital and revenue, covering a period of years, as distinct from the annual estimates prepared for the purpose of determining the rate levy. In such a case financial considerations might lead the council to predetermine its policy as to expenditure for that period, whereas in the ordinary way financial regulations restrict the finance committee, in their report to the council on proposals of other committees for expenditure, to the financial effect of any particular proposal.

Similarly the financial officer may be properly looked to for advice on the financial effects of such matters as the proposed exercise of a statutory right of purchase of public utility undertakings or the taking of joint action with other authorities in the provision of necessary services. [128]

London: L.C.C.—The Comptroller is the chief financial officer of the L.C.C., and in that capacity acts as :

- (1) Financial adviser in all matters affecting (a) the finances of the council and the council's financial relations with other authorities ; (b) local taxation including the relations between local and imperial taxation. In this capacity he is responsible for ; (i.) collation of annual estimates ; (ii.) taking any necessary steps in regard to the raising and investment of moneys, loans to local authorities, superannuation and pension matters, financial adjustments with other local authorities, levying of county rate and preparation of precepts, and preparation of all financial statistics ; (iii.) registration and management of local bonds for housing ; (iv.) financial correspondence of council generally ; (v.) investigation and advice upon claims for trade compensation ; (vi.) advising on and effecting all insurances of the council and management of the council's insurance fund.
- (2) Chief accountant of the council, with responsibility for keeping the main accounts of the council and submission of same for audit, conduct of internal audit generally, supervision of all departmental accounting arrangements and other financial records.
- (3) Receiver and paymaster of the council, the duties including preparation of orders for payment and authentication of cheques, transfer notes and warrants.

The Westminster Bank Ltd. are the county treasurer, the appointment being made in pursuance of the L.G.A., 1888. The treasurer merely acts as the council's banker, accounting for such receipts as are paid over to him on the council's behalf, and making such payments as the council may order. The treasurer receives the formal orders for payment made by the council in pursuance of sect. 20 (3) of the L.C.C. (General Powers) Act, 1934 (*m*), but, with certain exceptions, he is not supplied with a detailed schedule of payments to be made to individual creditors, and he is expected to honour all cheques purporting to be signed on behalf of the council. The treasurer is remunerated by means of the "free balance" on which he is not required to allow interest to the council. One million of 3½ per cent. War Loan, inscribed in the joint names of the county treasurer and the council, is provided by the treasurer as security for the council's cash balance. [129]

Metropolitan Borough Councils.—Sect. 62 of the Metropolis Management Act, 1855 (*n*), requires the appointment of treasurers and provides for their remuneration. Sect. 63 prohibits the treasurer, his partner or servant from having anything to do with the office of clerk, or the clerk, his partner or servant, with that of the treasurer, on pain of forfeiture and payment of £100, which may be recovered by any person with costs in any of the superior courts of law. Officers entrusted with money must give security. [129A]

FINANCIAL STATEMENT

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See also titles :

ACCOUNTS OF LOCAL AUTHORITIES ;	EDUCATION FINANCE ;
AUDIT ;	POLICE ;
AUDITORS ;	UNEMPLOYMENT.

Introductory.—The term “financial statement” when used in connection with local government, denotes the statement of income and expenditure which, under the relevant Acts and orders, must be submitted at audit to the district auditor, and on the basis of which a stamp duty is levied by which the Government recover the cost of the audit (see title AUDIT, at pp. 503 *et seq.* of Vol. I.).

Sect. 222 of the L.G.A., 1933 (*a*), provides that where any accounts of an authority are audited by a district auditor, the authority shall prepare and submit to him at every audit a financial statement of those accounts, in duplicate, in the prescribed form and containing the prescribed particulars (*b*). At the conclusion of the audit, the district auditor must certify on each copy of the financial statement the amount of the expenditure audited and allowed by him, and further, that the regulations with respect to the statement have been duly complied with, and that he has ascertained by audit the correctness of the statement. One copy of the financial statement must have the stamp charged under sect. 221 (*a*) affixed to it, and at the conclusion of the audit, the district auditor must cancel the stamp and send the stamped copy to the M. of H.

If an authority fail to comply with sect. 222 of the Act, the authority, and the clerk if one is appointed, or if not, the treasurer or other officer whose duty it is to keep the accounts, are liable on summary conviction to a fine not exceeding £20, and compliance with the section may be enforced, at the instance of the M. of H., by *mandamus*.

[130]

The Audit Regulations, 1934.—These regulations (*c*) were made by

(*a*) 26 Statutes 426.

(*b*) “Prescribed” means prescribed by regulations of the M. of H.; see s. 305 of the Act; 26 Statutes 467.

(*c*) S.R. & O., 1934, No. 1188.

the M. of H. under Part X. of L.G.A., 1933, and came into operation on December 1, 1934, superseding the provisional regulations of May, 1934.

Para. 4 provides that the financial statement and the certificate of the district auditor to be appended thereto shall be in the form and contain the particulars which have been prescribed by the M. of H. by order or other instrument in force on December 1, 1934.

In the case of a parish council or parish meeting, or a joint committee appointed by any two or more of such bodies, the financial statement is under the proviso to para. 7 to be treated as the abstract of accounts, and in lieu of preparing an abstract of accounts, as required in the case of other authorities, they must give public notice within seven days of the completion of the audit and the deposit of the financial statement, which thus serves as an abstract.

Every joint committee, or joint board, other than a joint committee appointed by parish councils or parish meetings, must, within six weeks after receiving the auditor's report, send the several authorities constituting the joint committee or joint board, a copy of the report and financial statement of the accounts as certified by the district auditor (para. 8). [131]

Principles involved in Compilation.—The form of the financial statement for nearly all local authorities is that prescribed by the Financial Statements Order, 1921 (*d*). Reference should be made to the title AUDIT, at pp. 501—503 of Vol. I., for the authorities whose accounts are wholly subject to district audit, and those partly so subject, together with, in the latter case, the accounts which are audited by the district auditor.

In addition to the statutory financial statement, with which this title deals, there are other forms of income and expenditure statement extant. Examples include the Education Annual Statement prescribed by the Education Account (Annual Statements) Order, 1921 (*e*), and the grant claims in respect of police and unemployment schemes (see titles POLICE and UNEMPLOYMENT), which are audited or examined by the district auditor. No stamp is required to be affixed to these forms, since, where expenditure attracts stamp duty it is included in the statutory financial statement. In the case of expenditure under the Probation of Offenders Act, 1907 (*f*), however, a form of financial statement is issued by the Home Office which must be certified by the district auditor, and on which stamp duty is payable (*d*).

The instructions appended to the prescribed form of statement require the officer responsible for the statement to compile from the ledger a schedule setting out the total amount credited, and debited, to each account, but excluding any item which is included more than once in the schedule, *e.g.* where an item is shown as income in one account and expenditure in another. The schedule must be submitted to the district auditor at the audit and preserved for future reference.

The above instruction was included at a time when the present

(*d*) Printed copies of the prescribed form under the Financial Statements Order, 1921 (S.R. & O., 1921, No. 1902) can be obtained from Shaw & Sons, Ltd., 788, Fetter Lane, E.C.4.

(*e*) S.R. & O., 1921, No. 1886. See title EDUCATION FINANCE at p. 185 of Vol. V.

(*f*) 11 Statutes 365.

form of epitome of accounts was not generally in use. The memorandum accompanying the order states that the epitome will take the place of the schedule referred to, and will be found to give the necessary totals for the financial statement.

It is important to note the point as to not including the same item more than once, in connection with deducting items which appear as credits in expenditure accounts, such as (a) correcting or adjusting transfers; (b) recoveries of overpayments; or (c) discounts obtained. In these cases the credit items should be deducted from the expenditure and not shown as income. [132]

On the other hand, expenditure must be entered in full without deduction of income. Thus, items of the following classes which sometimes appear as contra credits, must be treated as income and not be deducted from the relevant expenditure: (a) charges for work executed, (b) contributions in aid of expenditure, or (c) proceeds of sale of any kind.

The same principles should be observed in the treatment of the income side of the statement, thus, abatements of income such as discounts given, refunds of overpayments, etc., should be deducted from the gross income and not be treated as expenditure. Costs connected with income and its collection should, however, be treated as expenditure.

Under the regulations in force prior to the Financial Statements Order, 1921 (g), contributions to sinking funds and other similar funds as well as payments out of such funds, were treated as expenditure, and this resulted in stamp duty being charged sometimes on contributions to the fund, sometimes on the fund expenditure and sometimes on both. Under the order of 1921, however, transfers from one fund to another fund of the same authority should be deducted from the expenditure of the transferor fund and from the income of the transferee fund, and only the final payments out of the latter treated as expenditure. An example may be cited from the Housing (Assisted) Scheme repairs fund and sinking fund. The yearly contributions to these funds will be shown as expenditure in the Revenue Account and as income in the funds themselves. Under the order of 1921, such contributions would be deducted from both sides of the financial statement, leaving the actual expenditure on each fund to rank for stamp duty. This direction extends to similar transactions in connection with contributions to reserve funds, sinking funds, pension funds, trading revenue accounts, etc., and secures uniformity of treatment.

It is necessary to note, however, that payments in respect of rate or rent charges, services rendered or supplies made by one fund to another, should not be treated as contributions on the lines laid down above, but should rank as expenditure of the authority.

Moneys invested and remaining as part of the unexpended balances of the authority, including loans advanced by them, should not be treated as expenditure. Similarly, the proceeds of sale of investments and the repayment of loans advanced by the authority should not be treated as income. Profits and losses on such transactions, however, should be treated as income or expenditure, as the case may be, and costs connected with the transactions should also be treated as expenditure. [133]

Form of Financial Statement.—The statement is in two parts, the first of which is in debit and credit form as follows :—

Revenue Funds	Income, including Contributions.			Revenue Funds	Expenditure, including Contributions.		
	£	s.	d.		£	s.	d.
_____				_____			
_____				_____			
_____				_____			
Total Revenue Credits				Total Revenue Charges			
Capital and Loan Accounts				Capital and Loan Accounts			
Sinking Fund Ac- counts				Sinking Fund Ac- counts			
Reserve and other Special Fund Ac- counts				Reserve and other Special Fund Ac- counts			
Total income inclu- ding contribu- tions				Total expenditure including con- tributions			
Deduct contributions included above				Deduct contributions included above			
Total income ex- cluding contribu- tions				Total expenditure excluding con- tributions			
Balances in hand brought forward				Balances overspent brought forward			
Balances overspent at end of period				Balances in hand at end of period			

Dealing with the items seriatim, each Revenue Fund must be specified, *e.g.* Housing Fund, Education Fund, Rate Income Appropriation Account, etc., and each item must be shown gross, *i.e.* including contributions. The next three items, *i.e.* Capital and Loan Accounts, Sinking Fund Accounts and Reserve, etc., Accounts, are total items, and where there is more than one fund or account under any heading, they would be summarised to obtain one total.

From the total income including contributions, must be deducted the total of all contributions included in the preceding items, and with the addition of the balances specified, the resultant totals of the two sides of the statement are in agreement, thus proving arithmetical accuracy.

The figure of total expenditure excluding contributions is carried to the second part of the financial statement, and after deducting the amount (if any) disallowed at audit, the resultant figure falls to be reduced by the deduction of the items set out in the schedule to the Audit Stamp Duty (Local Authorities) Order, 1921 (*h*) which are detailed in the title AUDIT, Vol. I., p. 503.

It is important to note that these deductions are only allowed in so far as they are included in the expenditure audited and allowed, *i.e.* included in the first part of the financial statement as described above. Thus, in the case of a borough, the accounts of which are not wholly subject to district audit, no deductions would be allowed for items which are not included in that part of the accounts subject to district audit, *e.g.* expenditure out of loans in connection with accounts not subject to district audit. On the other hand, it should be noted that rate aid transferred from the rate fund to a fund which is not subject to district audit should be deducted in the same way as a precept, and rate aid transferred from the rate fund to a fund which is included in the first part of the financial statement, *i.e.* included as expenditure in each fund, should also be deducted in the same way as a precept. Thus, in the case of a borough where the accounts are only partly subject to district audit, rate aid transferred to (say) the General Rate Fund, would be included as expenditure of the rating fund, but would then be deducted in the same way as a precept. Similarly, rate aid transferred to (say) the Education Fund would be included as expenditure of the rating fund, and deducted as a precept, the education fund income and expenditure being shown gross.

On completion, and after examination by the district auditor, the financial statement is stamped. If the duty exceeds £5 it must be denoted by an impressed stamp. The auditor then appends the certificate mentioned under "Introductory" (*ante*), inserts the period covered by the accounts, and in words, at length, the amount of expenditure allowed by him at the audit. The certified statement is then dealt with as previously indicated. [134]

London.—By virtue of sect. 243 of L.G.A., 1933 (*i*), Part X. (Accounts and Audits) of that Act extends to London, but the accounts of the Common Council of the City of London are not mentioned in sect. 219 of the Act (*k*), as being accounts which are subject to audit by a district auditor, although that section covers the accounts of the L.C.C. and of metropolitan borough councils. The Financial Statements Order, 1921 (*l*), applies to the accounts of the L.C.C. and of the borough councils. [135]

(*i*) 26 Statutes 437.

(*k*) *Ibid.*, 424.

(*l*) S.R. & O., 1921, No. 1902.

FINANCING WORKS OUT OF INCOME

See CAPITAL EXPENDITURE OUT OF INCOME.

FIRE ALARMS

See FIRE PROTECTION.

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See FIRE PROTECTION.

FIREMEN

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See also titles : FIRE PROTECTION ;
LONDON FIRE BRIGADE ;
POLICE PENSIONS.

Powers of Local Authorities to Employ (a).—The enactments under which borough councils, urban district councils, parish councils and parish meetings of rural parishes without parish councils, may provide fire engines are summarised in the title **FIRE PROTECTION**, *post*, at pp. 78—80, and the mode in which a R.D.C. may obtain this power is indicated on p. 79. As to firemen, it is only necessary to mention that where sect. 32 of the Town Police Clauses Act, 1847 (*b*), is in force, the borough or district council may employ a proper number of persons to act as firemen, make such rules for their regulation as they think proper, and give such firemen and other persons such salaries and rewards for their exertions in case of fire as they think fit.

By sect. 2 of the Police Act, 1893 (*c*), a borough council may by resolution delegate to the watch committee their powers under sects. 32, 33 of the Town Police Clauses Act, 1847, or under similar enactments in any local Act ; and where such a resolution has been passed the watch committee may employ constables (with the officer's consent) wholly or partially as firemen. The pay of constables exclusively so employed, and the allowances of constables partially so employed, are

(a) Reference may be made to the Report of the Committee of 1920 on the Hours, Pay and Conditions of Service of Firemen in Professional Fire Brigades in Great Britain.

(b) 13 Statutes 603.

(c) 12 Statutes 855.

to be defrayed from the fund or rate which is applicable to the purposes of the fire brigade or fire police.

As to parish councils and parish meetings, it is pointed out, *post*, on pp. 79, 80, that although sect. 29 of the Poor Law Amendment Act, 1867 (*d*), authorises the payment of firemen, it is doubtful whether sect. 44 of the Lighting and Watching Act, 1833 (*e*), is wide enough to allow firemen to be paid. But rural parishes in which it is necessary to organise a fire brigade to work an engine maintained under the Act of 1833 cannot be numerous. [136]

Recruitment and Training.—In large towns probationers are usually appointed, preference being given to those with mechanical knowledge as in the larger brigades the repairs and maintenance of fire appliances are carried out at the fire station. The probationers are trained in fire brigade duties for two years (sometimes less) and then undergo an examination which is usually that of the Institute of Fire Engineers. This Institute was formed in 1918, and in 1924 it was registered under the Companies Act by licence of the Board of Trade. One of the main objects of the Institute is to promote, encourage and improve the science and practice of fire extinction, fire prevention and fire engineering and operations connected therewith, and to disseminate information on such subjects. The articles of association provide for the election of members and associates. A course of training and a curriculum for examinations have been formulated which cover such subjects as hydraulics, building construction, chemistry, elementary electricity, and first aid. The certificate of the association is increasingly being regarded as a necessary qualification for appointment or promotion to responsible positions.

No general standard of training experience seems to be exacted in making appointments to the superior positions in the fire service. [137]

Hours of Duty.—In the larger permanent fire brigades, the “continuous-duty” system operates; men are available for duty during the whole twenty-four hours. Residential quarters and recreation rooms are provided at or near the fire station. In some brigades, men are employed in the workshops for a certain number of hours each day; in others the men, after cleaning equipment, testing hydrants, etc., are free for the remainder of the day, subject in most cases to their remaining in their quarters available for fire duty.

Alternatives to the “continuous-duty” system are:

- (1) The “three-shift” or police system of duty, under which a man is on duty for eight hours and practically free for the remaining sixteen hours.

This is open to objection, as it involves a brigade of treble the strength of that of the continuous-duty system, and the difficulty of providing housing accommodation at a reasonable distance from the station for the additional number of men required must be overcome. Moreover, the daily work of the fire station falls upon the men working on the day shift and the men on the night shift have very little to do. In fact, it is rare to find this system adopted, as its heavy cost renders it almost prohibitive.

(d) 10 Statutes 557.

(e) 8 Statutes 1201.

- (2) The "two-platoon" system, under which two shifts of men perform twelve hours duty alternately.

This has been adopted in a few brigades, where it is understood to have worked well and to be popular with the men, although it is open to the objection that half the men's time is spent in night work and they cannot have meals regularly with their families. Moreover, it involves a brigade of double the strength to that required by the continuous-duty system, although it is not so costly as the three-shift system. Both the three-shift system and the two-platoon system also possess the serious disadvantage that under them many men may serve in a fire brigade for years without obtaining much experience in actual fire-fighting, owing to there being few calls during their shifts of duty. These two systems are open to the objection that the more costly the service, the smaller the opportunity a fireman has of making himself efficient.

- (3) The "stand-by" system, under which a man is on duty for eight hours, is in his quarters and available for fires for eight hours, and is absolutely free for the remaining eight hours. By adjusting the hours of duty, it is possible for the men to work the shifts in periods of twenty-four hours each, thus giving each man one day completely free from duty in every three days.

In the "stand-by" system little more accommodation is required than for the continuous-duty system, in order to enable the men to continue to reside in their quarters, and the strength of the brigade would be approximately only 50 per cent. more than under the continuous-duty system.

The general opinion seems to be that the continuous-duty system is the most efficient and the most economical, and it is thought that the majority of firemen prefer it, provided leave is granted on a sufficiently generous scale. [138]

Pay.—No standard rates of pay have been adopted for professional firemen, nor is there uniformity in conditions. In some places extra pay is given for turning out at fires where men are not actually on duty; in others extra pay is granted for each fire attended. Where two or three permanent men are attached to a retained brigade they are usually paid upon a similar scale to those in professional brigades, the "retained" or "auxiliary" firemen being paid a quarterly retaining fee with an hourly fee for attendance at fires, drills and station duty.

In fixing the scale of pay of the chief officer, the population and rateable value of the area, the strength of the brigade and any special risks should all be taken into consideration. [139]

Trade Pay.—In certain brigades special allowances (usually 2s. 6d. per week) are made to firemen working at their trades. [140]

Allowances.—In practically all brigades, uniform and fire boots are provided free for all ranks. In most of the larger brigades the system of living in quarters with telephonic communication has been

adopted and in the smaller brigades the chief officers usually reside in quarters at the fire station. Where free quarters are not provided it is an advantage that a non-pensionable rent allowance should be paid, in which case regulations should be made governing the maximum distance from the station at which a fireman should be allowed to reside. [141]

Leave.—One day's leave in seven days, and one half-day on each alternate Sunday and six hours' leave between the weekly leave days have been extensively recognised as being appropriate when men are available for duty for twenty-four hours; the practice, however, varies in different towns. Annual leave varies from fourteen days for a fireman to three weeks or a month for a chief officer. [142]

Stoppages of Pay while Sick.—The treatment of firemen while sick varies. In some brigades 1s. a day is deducted from a man's pay; in other brigades full pay is granted less the amount the man receives under the National Health Insurance Acts. Full pay is usually granted to a fireman incapacitated through injuries received on duty, to cease when he is medically certified as unfit for further service. [143]

Medical Attendance.—In some of the larger brigades free medical attendance is provided for sick men. [144]

Discipline.—Conditions of appointment usually provide for the investigation of all charges of unfitness, negligence or misconduct by the chief officer, and for the award by him of any punishment he may consider desirable, subject to appeal to the council or (in police brigades) to the watch committee. [145]

Fire Brigade Pensions Act, 1925.—Provision is made by the Fire Brigade Pensions Act, 1925 (*f*), for pensions, allowances and gratuities to professional firemen who are members of fire brigades, and their widows, children and dependants. The Act came into operation on April 1, 1926 (*g*), but extends only to "professional firemen," which term is defined in sect. 23 (2) of the Act as meaning "any member of a fire brigade maintained by a local authority who is wholly (*h*) and permanently employed on fire brigade duties and to whom the Police Pensions Act, 1921, does not apply" (*i*). Local authorities for the purposes of the Act include: (1) county councils; (2) borough councils; (3) urban and rural district councils; and (4) parish councils (*k*). [146]

Compulsory Retirement.—Retirement is made compulsory for professional firemen of all ranks on attaining the age of sixty, except (*i*.) where the council extend a person's service for a further period (*l*), or (*ii*.) as regards firemen serving on April 1, 1926, who have not completed twenty-five years' service (*m*). If a fireman has completed twenty-five years' service and has attained the age of fifty-five, the council may require him to retire if his retention would not be in the interests of efficiency (*n*). [147]

(*f*) 13 Statutes 1095.

(*g*) S. 26; 13 Statutes 1109.

(*h*) Distinguish the Police Pensions Act, 1921 (which applies *inter alia* to police constables acting as firemen), and which does not require its beneficiaries to be engaged *wholly* in police duties; see title POLICE PENSIONS.

(*i*) S. 23 (2); 13 Statutes 1107.

(*l*) S. 1.

(*n*) Ss. 1 (2), 2 (1) (a).

(*k*) S. 23 (1).

(*m*) S. 22 (5).

Pensions, Gratuities and Allowances.—The statutory pension is based on approved service, *i.e.* service after twenty years of age (*o*) which, in respect of a fireman serving on April 1, 1926, includes *past* service (*p*). Past (or non-contributory) service is only reckoned as *half* the actual period in the calculation of pensions (*p*), except that the council may increase the pension payable to an amount not exceeding that based on *contributory* service, subject to the payment by the fireman of such a sum as the council may think fit not exceeding 5 per cent. of the total pay received during non-contributory service (*q*). Pensions are payable to the firemen in the circumstances and upon the bases which follow :

Entitlement (r).

(1) On completion of twenty-five years' approved service, having attained the age of fifty-five.

(2) On retirement after ten years' approved service (or over) with a medical certificate of incapacity.

(3) On total incapacity for the performance of his duty arising through injury received whilst in execution of duty, without his own default.

(4) Partial disablement arising as under No. (3).

Basis (s).

One-sixtieth of annual pay for each year of approved service subject to a specified maximum according to age at retirement, and in any case not more than two-thirds.

One-sixtieth of annual pay for each year of approved service, maximum two-thirds.

From thirty-sixtieths to full pay dependent upon whether the injury was accidental or non-accidental and the length of service. (NOTE.—By s. 23 (b) an injury received whilst engaged at a fire or in drill involving special risk is to be deemed non-accidental.)

From ten-sixtieths to forty-sixtieths dependent as under No. (3).

Where a professional fireman is compelled to retire on the ground of age, then, if he is not entitled to retire without a medical certificate, he is entitled to receive such ordinary pension or gratuity as from his retirement as he would have been entitled to receive had he retired on a medical certificate (*t*). [148]

Pensions and allowances are payable to widows, children and dependants of professional firemen in the circumstances and upon the bases which follow :

Entitlement (u).

(5) To widows and children, where fireman dies from effects of injury or disease resulting from duty, without his own default.

(NOTE.—A widow's pension is payable so long as she is of good character, and is suspended if she re-marries, but should she again become a widow the pension is to be resumed on proof that her circumstances render such pension necessary (*b*)).

Basis (a).

(1) If a fireman dies from accidental injury or disease resulting from duty the pension to the widow is the greater of the following :

(a) From £50 per annum in the case of a chief officer to £30 per annum in the case of a fireman.

(b) Percentage of pay varying from 4 per cent. to 12½ per cent. according to length of service, subject to a deduction if the husband was on pension before decease.

And the allowance in respect of *each* child under sixteen is :

From £15 per annum in the case of a chief officer to £10 per annum

(o) S. 6 (1).

(q) S. 22 (2).

(s) Schedule, Part I.

(u) S. 3.

(b) Schedule, Part II. (17 and 18).

(p) S. 22 (1) (a).

(r) S. 2.

(t) S. 2 (2) (a).

(a) Schedule, Part II.

*Entitlement.**Basis.*

in the case of a fireman, subject to maximum aggregated children's allowances of £50 and £30 respectively, except where there is no widow, or she dies before all the children reach sixteen, when the maximum aggregate allowance may be increased by 50 per cent.

(2) If a fireman dies from a non-accidental injury received on duty, the widow's special pension is :

One-third of pay at death or retirement ; and the allowance in respect of *each child* is :

One-fifteenth of pay, but if no widow, or she dies before child reaches sixteen, allowance may be two-fifteenths, but in any case the allowance is not to be less than mentioned in (1) above, and the aggregate pension in any year to widow and children is not to exceed two-thirds of annual pay. [149]

Gratuities are provided for as follows :

If the council are satisfied that there are special reasons, they may, with the consent of the widow, or otherwise the guardian of the child or children, grant a gratuity in lieu of a widow's pension or child's allowance, the maximum to *widow* being one-twelfth of annual pay for each completed year of service, and to *children* one-sixtieth, or in total the annual pay (c).

Entitlement.

(6) Where incapacity arises not through injury and before the completion of ten years' service (d).

Basis.

Gratuity of an amount equal to one-twelfth of annual pay for each year of service unless he has not completed one year's approved service, when the gratuity is to be equal to his contributions (e).

Optional.

(6) Where fireman dies from injury or disease resulting from duty (f).

Gratuity may be granted to any dependent relative not exceeding the total deductions *which would have been made* from the deceased's pay if he had been subject to the Act for the whole of his approved service (g). [150]

The scales of pensions, gratuities and allowances payable under the Act are contained in full detail in the schedule to the Act, to which reference should be made. The pensions are based on the proportion of sixtieths of the annual pay in accordance with the scale applicable to each of the above classes but in no case exceeding 40/60ths. The Act is silent as to whether pay includes emoluments, *e.g.* free house, coal or lighting, but by analogy to the Police (Superannuation) Act, 1906 (now repealed), the word "pay" means payments in *cash* and not in kind, thus differing from the definition of "salary" in sect. 3 of the Local Government and other Officers' Superannuation Act, 1922 (gg).

(c) S. 3 (2), Schedule, Part II. (paras. 8 and 11) ; 13 Statutes 1111 and 1112.

(d) S. 2 (1).

(e) Schedule, Part I., para. 5.

(f) S. 3 (1) (c).

(g) Schedule, Part II., para. 12.

(gg) 10 Statutes 863.

When a fireman is entitled to receive a pension on the ground of incapacity through injury, or the widow or child of a fireman is entitled to receive a pension or gratuity in consequence of his death from the effects of an injury, neither the fireman nor his widow or personal representative is entitled to receive from the council compensation or damages in respect of the same injury or its consequences (*h*). [151]

Service.—The service of a professional fireman for the purpose of the Act is subject to deductions to be prescribed by regulations of the council in respect of sickness, misconduct or neglect of duty (*i*). “Approved service” means service after such deductions for these purposes as may be certified by the chief officer of the fire brigade, but must not include service before attaining the age of twenty years, except in the case of a fireman who before attaining that age is incapacitated by an injury received in the execution of his duty without his own default (*k*). Where a fireman has served in a fire brigade for not less than one year, he may, if he transfers to another fire brigade after April 1, 1926, reckon that service for the purpose of his pension (*l*). No transfer value is calculated, but the councils with whom the fireman first served are to contribute to the pension in proportions to be agreed, and in default of agreement to be settled by an arbitrator appointed by the Secretary of State (*m*). As usually a fireman transfers from one council to another for the purpose of personal advancement, it may well be that the fireman transferring may, on retiring on pension, be a chief officer, and a council with whom he served as an ordinary fireman may only have received rateable deductions upon a low rate of pay but have to accept part responsibility for a pension on greatly enhanced remuneration. In an extreme case, the pension fund might be crippled, and a special contribution from the rate fund become necessary. This is one of the defects of the system of deferred liability. The transferring authority do get a slight set-off to this disadvantage in that they escape liability for a return of the fireman’s contributions under sect. 18 of the Act (*n*). Provision is also made for reckoning discontinuous service in one or more fire brigades under certain circumstances and for reckoning service of firemen in the reserve forces (*o*). [152]

Service Prior to Act.—Any fireman serving on April 1, 1926, is entitled to reckon as approved service any past pensionable service, but to the extent that such past service has not been contributory it must be reckoned as half that period of approved service (*p*). “Past pensionable service” includes (*q*): (1) service as a professional fireman in the same fire brigade or previous service which was continuous therewith in another fire brigade; or (2) approved service as a whole-time fireman, to whom, as a member of a police force employed as a fireman, the Police Pensions Act, 1921, applied, if such service was continuous as a fireman; or (3) any other previous service as a whole-time fireman which the council may approve as past pensionable service.

(*h*) S. 4, 13 Statutes 1097; cf. *Watts v. Manchester Corpn.*, [1917] 1 K. B. 791; 34 Digest 419, 3400.

(*i*) S. 6 (1); 13 Statutes 1097. The decision of the council on this point is apparently final, though it is submitted that if the failure to count time as approved service resulted in the failure of a claim to a pension an appeal would lie under s. 15, *post*.

(*k*) S. 6 (1); 13 Statutes 1097.

(*l*) S. 7 (1).

(*m*) S. 7 (2).

(*n*) 13 Statutes 1103; see also *post*, p. 75.

(*o*) Ss. 8, 9; 13 Statutes 1098, 1099.

(*p*) S. 22 (1) (a).

(*q*) S. 22 (1) (b).

Under sect. 22 (2), a pension or gratuity may be increased (in spite of any deficiency in the period of contributory service) if the fireman pays to the council a sum not exceeding the amount of rateable deductions which would have been made from his pay during the period of his past pensionable service which was not contributory. The extra pension or gratuity is payable from the rate fund, not the pension fund, and may be in the form either of a weekly payment or a lump sum which may itself be spread over a period of years. The resolution authorising the increase should state whether the weekly payment is for life only, or whether in the event of the death of the pensioner before receipt of all the instalments of the lump sum, the balance is payable to the personal representatives or not payable at all. Past pensionable service may have been contributory under the Local Government and other Officers' Superannuation Act, 1922, or the Police Pensions Act, 1921, or any other superannuation scheme (*r*). [153]

Rateable Deductions.—The local authority must deduct 5 per cent. from the pay of every professional fireman as contributions to pension (*s*). Where a fireman, not having been dismissed, or required to retire as an alternative to dismissal, leaves the brigade without a pension or gratuity, the council, except where he leaves in such circumstances as will enable him to reckon his approved service in the brigade for the purpose of pension, must refund the whole of the deductions made from his pay, together with any sum paid by him to the council under sect. 22 (2) of the Act (*ante*) in respect of past non-contributory service (*t*). The council employing the fireman at the time of his retirement seem to be indicated by the last part of the definition in sect. 23 (1) of the Act (*u*), as the council who are to make the refund, and it would appear that this council are liable to pay not only the rateable deductions made by themselves, but also those made by previous employing authorities from whose service the fireman has transferred and which have in fact been retained by those authorities. The council may also, in the case of a fireman who is required to retire as an alternative to dismissal, refund the whole or any part of the rateable deductions made from his pay and such sums paid by him as aforesaid under sect. 22 (2), or apply them for the benefit of his wife or children. If a fireman is dismissed the council may, if they think fit, apply the whole or any part of the rateable deductions for the benefit of his wife or children (*a*). Where a fireman while serving with the fire brigade dies in such circumstances that no pension allowance or gratuity is payable under the Act, the council must pay to his widow or personal representative the whole of the rateable contributions made by him together with any sum paid by him to them in respect of past non-contributory service under sect. 22 (2) of the Act (*b*). [154]

Pension Fund.—If a separate pension fund is established, the fund must be credited with : (i.) rateable deductions of 5 per cent. from pay

(*r*) S. 22 (4).

(*s*) S. 17.

(*t*) S. 18 (1) as amended by the Fire Brigade Pensions Act, 1929 ; 13 Statutes 1103.

(*u*) 13 Statutes 1107.

(*a*) S. 18 (2) as amended by s. 1 of Fire Brigade Pensions Act, 1929 ; 13 Statutes 1103.

(*b*) S. 18 (3) as inserted by s. 1 of Fire Brigade Pensions Act, 1929 ; 13 Statutes 1104.

of firemen ; (ii.) an equal amount transferred by the council from the rate fund ; (iii.) dividends and interest on investments of the pension fund ; (iv.) sums transferred by the council from any other pension fund superseded by the Act of 1925 ; (v.) any sums paid to the council by firemen in pursuance of the Act ; and (vi.) any other sums which the council may resolve to carry to the fund from the rate fund (c). Where a council employ less than ten professional firemen, the creation of a separate fire brigade pension fund is optional, but nevertheless in fairness to future ratepayers who will not have had the benefit of a pensioned fireman's services it is suggested that a pension fund should be established. Where no pension fund is established items (i.), (iii.), (iv.) and (v.) above, are to be paid into the rate fund. Pensions, allowances and gratuities under the Act are to be paid out of the fire brigade pension fund, or if no such fund is established from the rate fund (c). [155]

Investment of Fund.—The surplus of the annual income of the pension fund must be invested in trustee securities (d). If, however, there is a deficiency, it may be met out of the sale of investments, but the value of the investments sold in any one financial year must not exceed one-tenth of the capital assets of the fund at the commencement of that year, and the balance of the deficiency must be met out of the rate fund (e).

A provision of the Act (f) allows the council to use any moneys in the pension fund as an advance to themselves by way of loan for the purpose of any statutory borrowing power possessed by them, subject to the following conditions : (1) the moneys so used must be repaid within the period allowed by the statutory borrowing power ; (2) interest must be paid to the pension fund at a rate per cent. to be determined by the council, but equal as nearly as may be to the current rate of interest on loans ; (3) the statutory borrowing power for which the pension fund moneys are used is deemed to be exercised as fully as if a loan had been raised. [156]

Proof of Incapacity for Duty, Liability to Serve Again and Revision of Pension.—Before granting a pension or gratuity on the ground of incapacity the council must be satisfied by medical evidence that the fireman is so incapacitated and that the incapacity is permanent (g). Where the application is for a special pension, they must also be satisfied that the injury was received in the execution of the fireman's duty and without his default, and that the infirmity was due to the injury (h). The council decide the degree of disablement and whether the injury was accidental, and must satisfy themselves periodically, if necessary by medical evidence, of the continuance of the incapacity (i). On cesser of the incapacity before the time at which the pensioner if still serving would have been entitled to retire on pension without medical certificate, he may be required to serve again (k). Special pensions may be granted for a specified period, and may be renewed from time to time or made permanent or re-assessed in case of substantial alteration in the degree of the pensioner's disablement (l). Persons dissatisfied with the opinion of any medical practitioner may

(c) S. 20 ; 13 Statutes 1104.

(e) S. 20 (5).

(g) S. 10 (1).

(i) S. 10 (3).

(l) S. 10 (6).

(d) S. 20 (4).

(f) S. 20 (3).

(h) S. 10 (2).

(k) S. 10 (4) (5).

appeal in accordance with rules made by the Secretary of State (*m*) to an independent person nominated by him, and the council are bound by the decision on any medical question determined on appeal, but otherwise their decision on any question under the section is final (*n*). [157]

Miscellaneous Provisions as to Pensions.—The council may reduce a pension when satisfied that the infirmity is due to misconduct (*o*) and their decision is final. Assignments of pensions except for the benefit of the family of the pensioner are void (*p*). Sect. 12 of the Act also contains provisions as to the payment of pensions and allowances in the case of a minor or of a pensioner receiving poor law relief, or neglecting to maintain a person for whom he is responsible, or being insane or otherwise incapacitated from acting. Pensions and allowances are normally to be paid in advance (*q*). They are liable to forfeiture or temporary withdrawal at the option of the council, if the grantee is imprisoned for more than one month, knowingly associates with thieves or carries on an illegal business or employment, or makes use of his former employment in a manner which the council consider to be discreditable (*r*), but an appeal to quarter sessions lies under sect. 15. Obtaining or attempting to obtain a pension, gratuity, or allowance or return of rateable deductions by fraud renders the offender liable to fine or imprisonment and forfeiture of pension, etc., so obtained (*s*). An appeal lies to quarter sessions (and on a point of law from quarter sessions to the High Court) against any decision of the council as to the forfeiture or refusal of a pension, gratuity or allowance (*t*), except in the case of the exercise of any discretion or a decision of the council which is declared by the Act to be final, *e.g.* a decision under sect. 10 of the Act (*u*). The Act provides for the suspension of a pension during any period for which the pensioner is in the service of any local authority (*a*). Nothing in the Act is to prejudice any existing right of dismissal of a fireman or a reduction in rank, or is to prevent the refusal of a pension on account of misconduct, or on any ground for which a pension, if granted, could be withdrawn (*b*). [158]

London.—See title LONDON FIRE BRIGADE.

(*m*) For rules as to appeals, see S.R. & O., 1926, No. 232.

(*n*) S. 10 (8) (*b*); 13 Statutes 1100.

(*p*) S. 12 (1).

(*r*) S. 13.

(*t*) S. 15.

(*a*) S. 16.

(*o*) S. 11.

(*q*) S. 12 (7).

(*s*) S. 14.

(*u*) See s. 10 (8).

(*b*) S. 19.

FIRE PLUGS

See HYDRANTS.

FIRE PROTECTION

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See also titles :

BYE-LAWS ;
BUILDING BYE-LAWS ;
CINEMATOGRAPHS ;
FACTORIES AND WORKSHOPS ;
FIREMEN ;
HEATH AND FOREST FIRES ;

HYDRANTS ;
LONDON FIRE BRIGADE ;
SAFETY PROVISIONS OF BUILDINGS AND
STANDS ;
THEATRES.

PRELIMINARY

This article is divided into two parts : first as to the powers of local authorities to provide for the suppression of outbreaks of fire ; and secondly as to their powers for preventing or limiting outbreaks of fire. For a treatment of the problem of fire in unenclosed spaces, see the title HEATH AND FOREST FIRES.

Outside London no statutory obligation is imposed on any local authority to provide or maintain a fire service. The public general statutes relating to the maintenance of a fire service merely confer powers, and the exercise of these powers is in the discretion of a council. [159]

POWERS OF LOCAL AUTHORITIES AS TO SUPPRESSION OF FIRES

The fire brigades of most boroughs and urban districts are maintained under sects. 32, 33 of the Town Police Clauses Act, 1847 (a), which were put in force in boroughs and urban districts by sect. 171 of the

P.H.A., 1875 (*b*). The council of a borough or urban district may (1) purchase or provide (*c*) engines for extinguishing fire, water buckets, pipes and other appurtenances for such engines, and fire escapes and other implements for safety or use in case of fire; (2) purchase, keep or hire horses for drawing engines; (3) build, provide or hire places for keeping engines with their appurtenances; (4) employ a proper number of persons to act as firemen; (5) make rules for their regulation; and (6) give such firemen and other persons such salaries and such rewards for their exertions in case of fire as the council think fit (*d*). A council may send their fire brigade out of their borough or district on certain terms (*e*). [160]

By sect. 2 of the Police Act, 1893 (*f*), a borough council may delegate to the watch committee their powers under sects. 32, 33 of the Act of 1847, and that committee may employ constables wholly or partly as firemen, provided that no constable, who at the passing of the Act was not employed as a fireman, is to be so employed without his consent.

Sects. 32, 33 of the Act of 1847 may be put in force in a rural district, or any contributory place therein, by an order under sect. 276 of the P.H.A., 1875 (*g*), made on application of the R.D.C. Under sect. 276, as amended by sect. 25 (7) of the L.G.A., 1894 (*h*), a county council, parish council or ratepayers representing one-tenth of the rateable value of the district or contributory place, may also apply for such an order. [161]

Sect. 29 of the Poor Law Amendment Act, 1867 (*i*), enabled the vestry of any parish where there was no town council, local board or other authority competent to provide the same, to require the overseers to provide a fire engine, ladder or fire escape, for general use in the parish. The powers under this section of the vestry and overseers were transferred to the parish council by sect. 6 (1) of the L.G.A., 1894 (*k*). In view of the powers conferred upon urban authorities by sect. 171 of the P.H.A., 1875, sect. 29 of the Act of 1867 has no operation in an urban parish. [162]

If the provisions as to lighting of the Lighting and Watching Act, 1833, have been adopted by the parish meeting of a rural parish, with or without a parish council, sect. 44 of that Act (*l*) also authorises the provision by the parish council or other lighting authority of fire engines with pipes and other utensils proper for the same. But the Act of 1833 is superseded in boroughs and urban districts by sect. 163 of the P.H.A., 1875 (*m*). [163]

Although sect. 29 of the Poor Law Amendment Act, 1867, allows

(*b*) 13 Statutes 696.

(*c*) The word "provide" covers a temporary hiring (*James v. Staines U.D.C.* (1900), 17 T. L. R. 2; 38 Digest 225, 569).

(*d*) Town Police Clauses Act, 1847, s. 32; 13 Statutes 603.

(*e*) *Ibid.*, s. 33; 13 Statutes 604. See the definition of "the limits of the special Act" in s. 316 of P.H.A., 1875; 13 Statutes 757.

(*f*) 12 Statutes 855.

(*g*) 13 Statutes 741.

(*h*) 10 Statutes 795.

(*i*) *Ibid.*, 557.

(*k*) *Ibid.*, 778. Where a rural parish has no parish council, the parish meeting may exercise these powers by virtue of s. 5 and schedule to the Overseers Order, 1927 (S.R. & O., 1927, No. 55).

(*l*) 8 Statutes 1201.

(*m*) 13 Statutes 693.

the payment of the charges of such persons as may be necessary for the use of the fire engine, ladder or escape, and thus covers the payment of the firemen, sect. 44 of the Act of 1833 merely seems to authorise the payment of the caretaker of the fire engine and of the expenses of providing and keeping it, and it is not clear that paid firemen can be employed under sect. 44.

If two or more parish councils wish to combine to provide a fire engine, they should appoint a joint committee for the purpose under sect. 91 of L.G.A., 1933 (*n*).

To meet the cost of the provision of a fire engine, a borough or district council could borrow, with the consent of the M. of H., under sect. 195 of L.G.A., 1933 (*o*), and a parish council could borrow under the same section, with the consent of the county council and the Minister. The period usually allowed for a loan for a fire engine is ten years. The cost of building a fire station and of purchasing land for the purpose could also be raised by loan under sect. 195, but a period of thirty years would probably be allowed for the buildings and sixty years for the purchase of freehold land. [164]

The powers of parish councils were extended by the Parish Fire-engines Act, 1898 (*p*), which allows a parish council to agree with any neighbouring borough or district that any fire engines, with their appurtenances and firemen, provided by the council of that borough or district shall be used for extinguishing fires in the parish. Where a fire engine is sent beyond the limits of a borough or district in pursuance of any such agreement, the owner of the lands or buildings where the fire occurred, is not to be liable for any expense or charge under sect. 33 of the Town Police Clauses Act, 1847 (*ibid*). The neighbouring borough or district need not adjoin the parish, nor does there appear to be any obligation to require payment for the service provided. On the other hand, the Act does not allow a parish council to enter into an agreement with a volunteer fire brigade for a neighbouring area.

Joint action is also feasible under sect. 90 of the P.H.A. Amendment Act, 1907 (*q*), see *post*, p. 86. [165]

Types of Brigade (*r*). *Police Brigades.*—The public brigades in Great Britain fall into two categories according to whether the brigade does or does not form part of a police organisation, and the brigades within these categories may again be subdivided into two main types according to whether they consist either wholly or mainly of whole-time or of part-time firemen. The police brigades established by virtue of the Police Act, 1893 (*s*), are distinguished from the remainder mainly by the fact that the former are placed under the general direction and control of the chief officer of police and their pensions are paid from the police fund, an appropriate contribution being carried to that fund from the rate fund applicable to the fire brigade. Police brigades are formed in different ways, thus : (1) The men may serve exclusively as firemen and be recruited independently of the police, thus differing from professional firemen in non-police brigades merely in the fact that the

(*n*) 26 Statutes 355.

(*o*) *Ibid.*, 412.

(*p*) 10 Statutes 833.

(*q*) 13 Statutes 944.

(*r*) The portion of the title under this heading is based on the Report of the Royal Commission on Fire Brigades and Fire Prevention, 1923, Cmd. 1945.

(*s*) S. 2 ; 12 Statutes 855. This enactment does not apply to a county police force.

brigade is under the general control and direction of the chief constable, and the firemen come under the police pension scheme; (2) in other cases while the firemen serve exclusively as firemen when they have once entered the fire brigade, they are recruited from the police force (and thus receive the usual training as constables) and may revert to police duty if not found suitable for fire brigade services. In selecting recruits for the police, preference may be given to men with mechanical or other technical experience, with a view to their ultimate transfer to the fire brigade; (3) the fire brigade may be formed of fully trained policemen who serve on full-time fire duty for a period, reverting to the police as the exigencies of duty and the course of promotion may require. [166]

Professional Brigades.—"Professional brigades" include also those whose staffs consist wholly of full-time firemen and those where, though retained men or other auxiliaries are included, the majority of the calls are attended to by the full-time men. Professional brigades consisting exclusively or mainly of full-time men are relatively few and about two-thirds of them are non-police brigades.

All, save a few of the largest fire brigades, include certain part-time firemen as auxiliary staff. In the non-police brigades the auxiliaries are generally "retained" men, but may be unpaid volunteers, and in the police brigades they are generally found from men off duty or men who are employed near the fire station. Professional non-police firemen receive their pensions under the Fire Brigade Pensions Act, 1925. See title FIREMEN. [167]

Part-Time Fire Brigades.—There are many towns and districts where the population, area, rateable value and fire risks are insufficient to justify the maintenance of a professional or full-time brigade, but whose councils have established brigades consisting either wholly or mainly of part-time firemen. The part-time brigades, like the professional brigades, fall into two main categories according to whether the personnel is found for the greater part from the police force or from other sources, and of the latter the important and typical class is the "retained" brigade, consisting mainly of firemen who receive a retaining fee and are paid for their attendances. In the non-police brigades the personnel may be other employees of the councils or tradesmen or other persons. [168]

Police Part-Time Brigades.—The organisation most usually adopted is for the firemen to be found from constables, who are off duty, in quarters provided at or near the fire station or in houses near the station and connected with it by electric bells. In some cases, the necessary men are found wholly or partly from men on duty at the police station or on point duty or other duty close by. For such services rendered in off-duty hours, the police often receive a retaining fee and payment for each attendance at a fire.

In retained brigades, arrangements are usually made for certain members always to be available to receive a call, and they are usually selected with a view to their availability. [168A]

Volunteer Brigades.—Volunteer brigades consist wholly or mainly of firemen who elect their own officers, and are in theory independent of the council's supervision and control, from whom, however, they may receive an annual subsidy or a grant of buildings or appliances. Such brigades may include professional firemen, and although most of them are manned purely by volunteers, some are manned partly by retained men and partly by volunteers. Volunteer brigades draw their

funds from many sources besides local authorities, such as public subscriptions and donations, and charges for attendance at fires. They are under certain disabilities in the absence of any definite statutory provision in recovering their charges for attendance at fires. Disputes arise as to the value of the services rendered or the amount due on a *quantum meruit* basis. The officers of such a brigade have not the statutory power of control conferred by sect. 89 of the P.H.A. Amendment Act, 1907 (*t*), nor of overriding the wishes of the owner of the premises on which the fire occurs, conferred by sect. 87 of the same Act (*u*). Volunteer brigades are useful in country districts where there are arrangements for dealing with small outbreaks of fire pending the arrival of a regular brigade from a neighbouring centre. [169]

Private Brigades.—"Private brigades," are maintained not for the service of the public at large, but by individuals or firms for the protection of their own property. In this class may be included brigades maintained by Government departments or naval or military authorities for the protection of particular property. Such brigades rarely possess mobile equipment. Perhaps a somewhat wider field is covered by the colliery brigades which in some localities have been formed in connection with rescue stations. Thus the Durham and Northumberland Coal Owners Association have a brigade, with several stations, and are prepared under agreement to attend fires within a limited radius of a station. [170]

Powers of Firemen and Police.—In a borough or urban district in which sect. 87 of the P.H.A. Amendment Act, 1907 (*a*), has been put in force by an order of the Home Secretary, a police constable acting under the orders of his superior officer, a member of the council's fire brigade on duty, and any officer of the council have special power to break into a building which is reasonably supposed to be on fire, or any neighbouring land or buildings, without the consent of the owner or occupier, for the purpose of extinguishing the fire or protecting such building or rescuing persons or property from fire.

If sect. 89 of the Act (*b*) has similarly been put in force, the captain or other responsible officer of the fire brigade of the council, who attends in charge of the engine or other apparatus for extinguishing fires, is vested with the sole control over the brigade and every other brigade which is present, and may direct all operations of these brigades for the extinction of the fire.

Sect. 89 is declaratory only and does not create any offence, and imposes no penalty on a member of a fire brigade or other person who disobeys instructions. The powers are conferred only upon the officer in charge of the brigade of the council at any fire within the borough or district. The captain of a volunteer brigade or the chief officer of the visiting brigade of another council is not given any special power. [171]

In a case (*c*) decided before the passing of the Act of 1907, a member of a fire brigade provided by a council under sect. 32 of the Town Police Clauses Act, 1847 (*d*), was held to be justified in forcibly excluding,

(*t*) 13 Statutes 944. See also *infra*.

(*u*) *Ibid.*, 943. See also *infra*.

(*a*) 13 Statutes 943.

(*b*) *Ibid.*, 944.

(*c*) *Carler v. Thomas*, [1898] 1 Q. B. 673; 38 Digest 226, 572.

(*d*) 13 Statutes 603.

in pursuance of directions from the officer in charge of the brigade, a member of a volunteer brigade who sought access to premises where the council's brigade was engaged in extinguishing a fire. It was held that sect. 32 gave the fire brigade of the council control of the premises. It should be pointed out that the court stressed the fact that the fire brigade of the council was on the premises with the consent of the owner. This consent is not necessary if sect. 87 of the Act of 1907 is in force.

It will be seen that the officer in charge of the fire brigade of a council has power to override the wishes of the owner of the premises, if necessary, as the brigade have a public duty to perform, and the owner is therefore not entitled to use his own judgment with regard to his own property, as this may conflict with the interests of his neighbours. But if sect. 89 of the Act of 1907 has not been put in force, or where the fire engine has not been provided by a council under sect. 32 of the Act of 1847, the fire brigade have no statutory power to override the wishes of the owner of the premises. If he objects to their methods, he may call upon them to refrain, so long as his own property only is in danger. The possibility of danger to other lives or property would, however, give rise to the common law power of firemen to intervene (*e*). But in places where sect. 89 of the Act of 1907 is in force, the brigade need not wait for danger to neighbouring property to arise before taking control. The fact that the council's brigade may consist of part-time or inexperienced firemen does not appear to be material, and the officer in charge of operations would still have the right to control not only the police, but also a private or volunteer fire brigade or even a private brigade maintained at the actual premises on fire.

Where sect. 88 of the Act of 1907 (*f*) has been put in force, an officer in charge of the police at any fire in the borough or district may stop or regulate street traffic whenever he thinks it necessary to do so for the purpose of extinguishing the fire, or for the protection of life or property, and any person wilfully disobeying his orders is liable on summary conviction to a penalty not exceeding £5.

It should be mentioned that sects. 87 to 89 of the P.H.A. Amendment Act, 1907, were based on provisions which were commonly inserted in local Acts passed before 1907, and if it should be found that no order of the Home Secretary can be traced, putting these sections of the Act of 1907 in force in a particular borough or urban district, the reason may be that similar powers have been conferred by a local Act. [172]

Charges for Attendance.—Although a council may send their fire brigade outside the borough or district, and in that case are authorised by sect. 33 of the Town Police Clauses Act, 1847 (*g*), to make a charge for the service of the brigade, no charge can be made for the attendance of the brigade at premises within the borough or district for which the brigade is provided, as it is for the common benefit and at the common expense of the inhabitants of the area that means are provided for extinguishing fires, and the statute imposes no obligation to pay for the use of the same unless the fire engine is sent outside that area (*h*). A few exceptions exist, however, in towns with local Acts, passed mostly

(*e*) See *Dewey v. White* (1827), *Moody & Malkin* 56; 38 Digest 226, 570; and *Maleverer v. Spinke* (1537), 1 Dyer 35 b; 43 Digest 415, 332.

(*f*) 13 Statutes 944.

(*g*) *Ibid.*, 604.

(*h*) *Bridlington Local Board of Health v. Bower* (1873), 38 J. P. 73; 38 Digest 226, 574.

before 1870. Ashton-under-Lyne, Gateshead, Manchester, Newcastle-upon-Tyne, Watford, Stockport and Tynemouth are examples. The Legislature are, however, unfavourable to such charges and have refused to create further exceptions.

The right of a ratepayer to the gratuitous services of the fire brigade of the council is not limited to a case where a fire has actually broken out, but applies where there are reasonable grounds for fearing an outbreak of fire which could not be subdued by the ratepayer, but no person has a right to summon the fire brigade needlessly or capriciously or to keep it any longer than is necessary or to perform services which he ought to perform himself, otherwise he must pay for such services (*i*).

The position of non-ratepayer owners of property in danger occasionally gives rise to difficulty. For example, the owner of a motor vehicle is frequently not a ratepayer of an area where a fire occurs on such vehicle, and presumably is not entitled to the free services of the brigade. A charge can only be made, however, in pursuance of a contract expressed or implied, *e.g.* by a summons to the brigade by or on behalf of the owner. Frequently the vehicle is not owner-driven and the question arises as to whether the driver has authority to pledge his employer's credit. Presumably he would be held to have such authority to save his employer's property. In default of a summons to the brigade, the brigade may intervene, but if such intervention were to prevent the spread of fire to ratepayers' property or traffic obstruction, it may be that no claim would lie against the owner of the vehicle.

Where a fire engine of a council is sent out of the borough or district under sect. 33 of the Town Police Clauses Act, 1847 (*k*), the owner of the lands or buildings where such fire has happened is in that case to defray the actual expense which may be thereby incurred, and also a reasonable charge for the use of the engine with its appurtenances and for the attendance of the firemen. [173]

The liability to pay is upon the owner of the lands or buildings where the fire shall have happened. The word "owner" has the meaning assigned to it by sect. 4 of the P.H.A., 1875 (*l*), that is "the person receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would receive the same if such lands or premises were let at a rackrent." The occupier of land or buildings as such (even though tenant from year to year) is therefore not liable to defray the expense of extinguishing a fire or a charge for the use of an engine (*m*). The common law right, however, of the council to make a contract with the occupier for reward is not taken away by the section (*n*). The statutory charge can only be made against the owner of "lands or buildings" so that, *e.g.*, the owner of a motor vehicle would not be included. Parliament has refused to sanction clauses in local Acts authorising charges for extinguishing fires in motor vehicles—even to non-ratepayers (*o*). [174]

(*i*) *Grays Urban Council v. Grays Chemical Works, Ltd.*, [1918] 2 K. B. 461; 38 Digest 226, 575.

(*k*) 13 Statutes 604.

(*l*) *Ibid.*, 625. For a discussion as to meaning of "owner" and references to cases, see Lumley's Public Health, 10th ed., p. 8, and 38 Digest 177 *et seq.*

(*m*) *Sale v. Phillips*, [1894] 1 Q. B. 349; 38 Digest 227, 581.

(*n*) *Dawentry Corpn. v. Newbury and Wright*, [1926] 1 K. B. 383; 38 Digest 227, 582.

(*o*) *E.g.* a Bill promoted by the Bootle Corpn. in 1930.

If any difference arises between the council and the owner of the lands or buildings, the amount of the expenses and charge, as well as the propriety of sending the engine and firemen for extinguishing the fire (if the propriety thereof be disputed) is under sect. 33 to be determined by two justices, whose decision is final, and the amount of the expenses and charge is to be recovered by the council as damages. The section does not prevent a council from contracting with some person, other than the owner of the premises, for the services of the brigade outside their area (*p*). The judgment in this case indicates that sect. 33 is enabling and not restrictive, and that in order to prevent the spread of fire to premises in their own area the fire brigade may be sent with no request from any one—on the initiative of responsible officials—to extinguish a fire outside the area, and in those circumstances the section indicates who is to pay the expenses—the owner of the lands and buildings (*q*). This section is so widely worded, however, that the council may be able (subject to the decision of the justices as to propriety) to charge for the use of their fire brigade even when there was no possibility of the fire spreading to any property within the borough or district from which the brigade was sent. [175]

The above provisions as to when a charge can be made and the liability for any charge only apply where the brigade is maintained under sect. 32 of the Town Police Clauses Act, 1847 (*r*), as put in force by s. 171 of the P.H.A., 1875, or by an order under sect. 276 of that Act (*s*) or by a local Act. Where sect. 33 of the Act of 1847 is not available, a claim for payment can only be based on contract, which will not necessarily arise even where an official message is received by the brigade from the police. [176]

Charges for the use of a fire brigade are usually assessed according to the number and capacity of engines and appliances used, the distance travelled and the number of the men and the length of time they are engaged at a fire. On this basis, a schedule of charges has been approved by the National Fire Brigades Association for the use of their members, and agreed by the insurance companies. It may be, however, that a property owner is not insured against fire, in which case the fact that a charge is in accordance with the scale is not necessarily evidence that it is reasonable, and the court are likely to modify the charge to fit the circumstances of the particular case. Two methods exist for the recovery of fire brigade charges: (1) Under sect. 33 of the Town Police Clauses Act, 1847 (*t*), the amount of the expenses and charges (as well as the propriety of sending the brigade outside the district) are to be determined by two justices, presumably having jurisdiction where the fire occurred. Such a determination by justices is not an order for payment within sect. 8 of the Summary Jurisdiction Act, 1848 (*u*), and therefore sect. 11 of that Act does not apply, and accordingly a complaint or information with reference to such determination need not be made within six months of the date of the sending of the fire engine, or of a demand made by the council, but within six months of the date of a demand from the party liable after the justices have determined the sum recoverable by the council under sect. 33 of the Act of 1847 (*a*).

(*p*) *Daventry Corpn. v. Newbury and Wright*, [1926] 1 K. B. 388; 38 Digest 227, 582.

(*q*) *Ibid.*, per SANKEY, J. (as he then was).

(*r*) 13 Statutes 603.

(*t*) *Ibid.*, 604.

(*a*) *R. v. Part* (1906), 70 J. P. 398; 38 Digest 227, 584.

(*s*) *Ibid.*, 741.

(*u*) 11 Statutes 276.

(2) Under sect. 261 of the P.H.A., 1875 (*b*), which provides that proceedings may at the option of the council be taken in the county court where demands recoverable summarily (*i.e.* before the magistrates) are below £50. It is submitted that the extension of jurisdiction of the county courts to £100 by the County Courts Act, 1903, did not extend to the special jurisdiction conferred by this section. But when sect. 5 (3) of the County Courts (Amendment) Act, 1934 (*c*), has been brought into operation by Order in Council, it would seem that £100 will be substituted for £50 in sect. 261 of the Act of 1875. When the amending Act of 1934 has wholly been brought into operation, sect. 5 (3) of that Act will be replaced by sect. 41 of the consolidation Act (*d*)—the County Courts Act, 1934; see sect. 193 (3), (4) of that Act (*e*).

The liability to pay for the use of a fire brigade is a debt, and therefore proceedings to recover the same in the county court must be brought within six years under the Limitation Act, 1623 (*f*), which period is allowed for the recovery of charges arising under a contract. For charges statutorily enforceable apart from contract, it is submitted that the six months' limitation applies (*g*). [177]

Arrangements for Use Outside Borough or District.—It has already been mentioned (*h*) that sect. 33 of the Town Police Clauses Act, 1847 (*i*), allows a council who have provided a fire engine under that Act, to send it with the appurtenances and firemen, beyond the limits of the borough or district for which it was provided, for the purpose of extinguishing fire in the neighbourhood. The cost of providing an engine, which would seldom be used, proved an obstacle to the exercise of the powers conferred on parish councils (*j*), and in consequence the Parish Fire-engines Act, 1898 (*k*), was passed. Sect. 1 empowers a parish council to agree with the council of any neighbouring borough or district for the use in the parish of any fire engines with their appurtenances and firemen provided by the council of that borough or district, but the owner of the property where the fire occurs is not to be liable to be charged (*l*). If sect. 90 of the P.H.A. Amendment Act, 1907 (*m*) has been put in force in a borough or district by an order of the Home Secretary, the council may enter into and carry into effect agreements with the council of any borough or district or the parish council of any parish for the common use of any fire engines, with their appurtenances and firemen, or for mutual assistance in case of fire. From the wording of this section, it would appear that if the section is in force in the area of one of the parties it need not, in order to make such an agreement lawful, be in force in the area of the other or others, provided that each contracting party has otherwise power to provide fire engines. The provision of a joint fire brigade with fire engines by the councils of two or more authorities may apparently be effected under sect. 285

(*b*) 13 Statutes 734.

(*d*) *Ibid.*, 109.

(*f*) 10 Statutes 429.

(*g*) *West Ham Local Board v. Maddams* (1876), 1 Ex. D. 516, n; 26 Digest 535, 2343; *Tottenham Local Board v. Rowell* (1876), 1 Ex. D. 514; 26 Digest 535, 2344.

(*h*) See *ante*, p. 79.

(*j*) See *ante*, p. 80.

(*k*) 10 Statutes 833. See also *ante*, p. 80.

(*l*) For a useful form of agreement under this section, see Ency. of Forms, Vol. XII., p. 630.

(*m*) 13 Statutes 944.

(*c*) 27 Statutes 55.

(*e*) *Ibid.*, 178.

(*i*) 13 Statutes 604.

of the P.H.A., 1875 (n), or under sect. 91 of the L.G.A., 1933 (o), by means of a joint committee. The costs of a joint committee would be defrayed under sect. 93 of the latter Act by the appointing councils in such proportions as they may have agreed upon, any difference being settled by the county council. [178]

Under the enactments above-mentioned, arrangements are made in several different ways. Sometimes there are reciprocal agreements for mutual assistance between councils who maintain fire brigades, and there may be either a formal agreement or merely a general understanding, but it appears that as a rule the brigade rendering assistance look to the owner of the premises where a fire takes place to pay their charges. Other localities have standing agreements for the fire brigade maintained by one council to protect the area of the other. A strong borough brigade may undertake the whole protection of one or more adjoining urban districts which maintain no brigade of their own, or a town brigade may protect a wide rural area, either (i.) an adjoining rural district (the R.D.C. having presumably obtained urban powers enabling it to enter into an agreement for the purpose), or (ii.) a group of rural parishes where the R.D.C. have not obtained urban powers. The usual practice in these standing agreements is for the district council or parish council whose area is protected, to pay a standing retaining fee which covers all services that may be rendered in the protected area, but the protected council may in addition pay a charge for services actually rendered. It is submitted that there can be no charge against the owner, as the principle of *Bridlington Local Board of Health v. Bower* (p) applies, and the visiting brigade is treated as provided by the protected council under their statutory powers. [179]

The prevalence of country house fires has led to the formation of county groups under the auspices of the National Fire Brigades Association. A number of adjoining brigades enter into informal arrangements for mutual assistance. It has been found to be impracticable to appoint a local commander-in-chief, as the chief officer of the home brigade has the sole right to control operations and to ask for extra help under sect. 89 of the P.H.A. Amendment Act, 1907 (q). A scheme of this kind, however, avoids delay as the permission of the mayor or chairman of each authority has not to be sought. The scheme usually provides for a brigade to move into and stand by in the area of another brigade which has temporarily left its district unprotected. The scheme often provides that the brigade of a temporarily populous area, such as a seaside resort, shall be exempt from the requirement of co-operation at certain seasons of the year. [180]

Apart from any antecedent arrangement, the superintendent of a fire brigade has power to call in where necessary for the proper discharge of his duties the services of an outside brigade, and the fire brigade called in, in the absence of evidence to show that the services were rendered gratuitously, are entitled to receive from the district council reasonable remuneration for the work of the members and for the use of the fire engine and other necessary implements (r). It is suggested that the owner of the premises cannot be called on in such a case to pay any charges or to refund to the district council any expenses paid by them. The visiting brigade is in the same position as if it had been

(n) 13 Statutes 744.

(p) (1873), 38 J. P. 73; 38 Digest 226, 574.

(q) 13 Statutes 944. See *ante*, p. 82.

(r) *James v. Staines U.D.C.* (1900), 17 T. L. R. 2; 38 Digest 225, 569.

(o) 26 Statutes 355.

provided by the home authority and their attendance is not within sect. 33 of the Town Police Clauses Act, 1847. [181]

Fire Alarms.—The P.H.A., 1925 (*s*), empowers a local authority to erect or fix and maintain fire alarms in such positions in any street or public place as they think proper after consultation with the police authority for the police district (*i.e.* a district for which there is a separate police force) in which the fire alarms are to be erected or fixed. These powers are not to be exercised in relation to any street which is a county road maintained by a county council, without the consent of the county council, or so as to obstruct or render less convenient the access to or exit from any station or goods yard belonging to a railway company, or any premises belonging to other statutory undertakers and used for the purposes of their undertaking (*t*).

The False Alarms of Fire Act, 1895 (*u*), imposes a penalty, recoverable in a court of summary jurisdiction, not exceeding £20, on any person knowingly giving, or causing to be given, a false alarm of fire to the fire brigade of any town or parish outside the metropolitan area, or to any officer thereof, whether by means of a street fire alarm, statement, message or otherwise. The Act does not appear to extend to a false alarm given to a voluntary fire brigade not provided by the council for the town or parish. It would be a good defence to a charge that the defendant had reasonable grounds for believing that the service of the fire brigade was needed even though no fire actually broke out. [182]

Provision of Hydrants.—The maintenance of a fire brigade by a local authority is optional, but all borough and urban district councils must cause fire plugs and all necessary works, machinery and assistance for securing an efficient supply of water in case of fire to be provided and maintained. For this purpose they may enter into any agreement with any water company or persons. See the title HYDRANTS. [183]

Fire Engines and Road Traffic.—The limitation in sect. 19 of the Road Traffic Act, 1930, of the hours during which drivers of certain vehicles may remain continuously on duty does not apply to motor vehicles used for fire brigade purposes—see sub-sect. (5) of the section (*a*). The requirement of an additional red rear light (for vehicles carrying overhanging or projecting loads) made by sect. 7 of the Road Transport Lighting Act, 1927 (*b*), does not apply to a vehicle actually in use for the conveyance of a fire escape (*c*); nor do the silence zone provisions of the Motor Vehicles (Construction and Use) (Amendment No. 2) Provisional Regulations (para. 4). Motor fire engines and other vehicles of a local authority whilst in use in fire brigade service are exempt from licence duty (*d*) provided the owner applies for a licence for and registration of the vehicle under the Road Vehicles (Registration and Licensing) Regulations, 1924, para. 32 (iii.) (*e*). Fire engines, etc., are exempt from speed limits where the observation of such limits

(*s*) S. 15 (1); 13 Statutes 1119. In force only where adopted by the borough or district council.

(*t*) S. 16; 13 Statutes 1119.

(*u*) S. 1; 13 Statutes 870.

(*a*) 23 Statutes 626.

(*b*) 19 Statutes 103.

(*c*) Road Vehicles Lighting (Special Exemption) Provisional Regulations (September 17, 1930), para. 4.

(*d*) Finance Act, 1920, s. 13 (4); 16 Statutes 853.

(*e*) S.R. & O., 1924, No. 1462.

would be likely to hinder the use of the vehicle for the purpose for which it is being used at the time (f). It is submitted that this section would not absolve the driver of a fire engine from the duty of taking reasonable care to avoid running over pedestrians in the road, even though such pedestrians had failed to take notice of warning bells or had become excited and acted foolishly (g). The prohibition in sect. 14 (1) of the Road Traffic Act, 1930, of driving motor vehicles on commons or moors, or elsewhere than on roads does not apply where the court is satisfied that the motor vehicle was so driven for the purpose of saving life or extinguishing fire or meeting any other like emergency (h). The provisions of the Road and Rail Traffic Act, 1933, regarding the licensing of goods vehicles do not apply to the use of a vehicle for fire brigade purposes (i). The requirement of the Motor Vehicles (Construction and Use) Regulations, 1931, that every heavy motor car shall be equipped with pneumatic tyres does not apply to turntable fire escapes or to tower wagons (k). [184]

OTHER PROVISIONS FOR FIRE PREVENTION AND PROTECTION OF LIFE AND PROPERTY

The earlier part of this title has been devoted very largely to the powers and duties of local authorities themselves to provide means for extinguishment of fires. There are certain statutory provisions for the enforcement of which the local authority are responsible imposing duties upon the owners of certain buildings designed to prevent the outbreak of fire and to secure the safety of persons frequenting such buildings. [185]

Bye-Laws with Regard to New Buildings.—Under sect. 157 of the P.H.A., 1875 (l), the council of a borough, urban district or rural district may make bye-laws with respect (*inter alia*) to the structure of walls, foundations, roofs and chimneys, for securing stability and the prevention of fires. These powers are extended by sect. 23 (1) of the P.H.A. Amendment Act, 1890 (m), which empowers the council of a borough or district in which the sub-section is in force (n) to make bye-laws with respect (*inter alia*) to the structure of floors, hearths and staircases. The powers were further extended by sect. 24 of the P.H.A. Amendment Act, 1907 (o), so as to empower the council of a borough or district where the section has been declared to be in force to make bye-laws with respect (*inter alia*) to the height of chimneys and the structure of chimney shafts for the furnaces of steam engines, breweries or manufactories. Bye-laws under these sections frequently require walls and other portions of a building to be constructed of incombustible materials. The words “incombustible materials” as used in sect. 19 of the Metropolitan Building Act, 1855, have been held

(f) Road Traffic Act, 1934, s. 3; 27 Statutes 539.

(g) *Scudder v. L.C.C.*, *The Times*, February 25, 1909, July 15, 1909; *Barrington-Ward v. L.C.C. and Mentmore Motor Cab Co., Ltd.*, *The Times*, May 31, 1933.

(h) S. 14 (1) (b); 23 Statutes 622.

(i) Road and Rail Traffic Act, 1933, s. 1 (7) (h); 26 Statutes 874.

(k) Art. 35 of S.R. & O., 1931, No. 4.

(l) 13 Statutes 689; extended to all rural district councils by the R.D.C. (Urban Powers) Order, 1931, S.R. & O., No. 580; 24 Statutes 262.

(m) 13 Statutes 833.

(n) This sub-section is in force in boroughs and urban districts if the council have adopted Part III. of the Act of 1890. It is extended to all rural districts by the R.D.C. (Urban Powers) Order, *supra*.

(o) 13 Statutes 919.

to mean wholly incombustible materials and not duoline (*p*). Sect. 158 of the Act of 1875 (*q*) deals with the approval and disapproval of plans and the pulling down of work executed in contravention of bye-laws, and sect. 183 (*r*) contains provisions as to penalties for breach thereof. See titles BUILDING BYE-LAWS and BYE-LAWS. [186]

Towns Improvement Clauses Act, 1847.—Where by virtue of its incorporation in a local Act, sect. 109 of the Towns Improvement Clauses Act, 1847 (*s*), is in force, roofs and external and party walls are 'to be constructed of incombustible materials and party walls (*t*) are to be carried through to the roof. [187]

Means of Ingress To and Egress From Places of Public Resort.—Every building outside the administrative county of London in a district in which sect. 36 of the P.H.A. Amendment Act, 1890 (*u*), has been adopted (*a*), used as a public place of resort must, to the satisfaction of the urban authority, be substantially constructed and supplied with ample, safe and convenient means of ingress and egress for the use of the public, regard being had to the purposes for which the building is intended and the number of persons likely to be assembled at one time, and such means of ingress and egress whilst the building is in use must be kept unobstructed to such extent as the urban authority require (*b*). An officer authorised in writing by the authority may at all reasonable times enter and inspect such building. The expression "place of public resort" means a building used or constructed or adapted to be used either ordinarily or occasionally as a "place of public worship (not being a dwelling-house so used) or as a theatre, public hall, public concert-room, public ball-room, public lecture-room or public exhibition-room, or as a public place of assembly for persons admitted thereto by tickets or by payment, or used or constructed or adapted to be used either ordinarily or occasionally for any other public purpose," but does not include a private dwelling-house (*c*) used occasionally or exceptionally for any of those purposes. The section does not extend to any building used as a place of public worship before or at the time of the adoption of the Act. [188]

Cinematographs.—For the law designed to secure the safety of the public against the risks attending the use of inflammable films in places of public entertainment and to prevent outbreaks of fire in premises where raw celluloid or cinematograph film is stored, see the title CINEMATOGRAPHS. [189]

(*p*) *Payne v. Wright*, [1892] 1 Q. B. 104; 34 Digest 589, 94. See also *Badley v. Cuckfield Union R.D.C.* (1895), 64 L. J. (Q. B.) 571; 38 Digest 185, 245.

(*q*) 13 Statutes 690. Extended to all rural districts by the R.D.C. (Urban Powers) Order, 1931, *supra*.

(*r*) 13 Statutes 705.

(*s*) *Ibid.*, 567.

(*t*) As to the meaning of the term "party walls," see *Watson v. Gray* (1880), 14 Ch. D. 192; 7 Digest 296, 214, and as to the ownership of a party wall since 1925, see the Law of Property Act, 1925, s. 38 and Sched. I., Part V.; 15 Statutes 215, 406.

(*u*) 13 Statutes 838.

(*a*) An order of the Minister of Health under s. 5 (13 Statutes 826), is required before this section can be put in force in a rural district.

(*b*) Appeal will lie to quarter sessions under s. 7 of the Act (13 Statutes 826). See *R. v. Cambridge Corpn., Ex parte Cambridge Picture Playhouses*, [1922] 1 K. B. 250; 42 Digest 923, 185, as to the right of authority to refuse to pass plans.

(*c*) P.H.A. Amendment Act, 1890, s. 36 (6); 13 Statutes 838.

Theatres.—For the law dealing with the different licensing requirements for theatres, as such, in different kinds of areas which exist under the law, see the title **THEATRES**. [190]

Factories and Workshops.—See title **FACTORIES AND WORKSHOPS**, Vol. V., pp. 409 *et seq.*

Bye-Laws as to Working-Class Houses.—By sect. 6 of the Housing Act, 1925 (*d*), the power of making bye-laws under the P.H.A., 1875, includes the making and enforcing by local authorities of bye-laws in the case of houses intended or used for occupation by the working-classes for (*inter alia*) securing stability and the prevention of and safety from fire. Any such bye-laws in addition to any other penalty may prohibit the letting for occupation by members of more than one family of any house unless the same are complied with, a reasonable time, however, being given for compliance where the houses are already so let. Sect. 7 deals with the execution of works to comply with such bye-laws (*e*). Model bye-laws have been issued by the Ministry of Health (*f*). [191]

Protection of Harbour Works, etc.—By the Harbours, Docks and Piers Clauses Act, 1847 (*g*), no one may boil or heat combustible matter in any vessel lying within a harbour or dock or in any place within the limits of the harbour except at such places and in such manner as the harbour authority shall specially appoint for the purpose. The harbour authority may make bye-laws for regulating the use of fires and lights within the harbour or within any vessel therein or within the prescribed limits (*h*), but no one may have a fire or lighted candle or lamp in any vessel near the pier or within any of the docks or works unless allowed by the bye-laws or with the harbour master's permission (*i*). See the title **HARBOURS**. [192]

Exposing Children to Risk.—By sect. 11 of the Children and Young Persons Act, 1933, a person who has attained sixteen years having the care of any child under seven, who allows the child to be in a room with an open fire grate not sufficiently protected to guard against the risk of his being burnt or scalded, without taking reasonable precautions against the risk, and by reason thereof the child is killed or suffers serious injury, is rendered liable to a penalty of not exceeding £10 (*k*). [193]

London.—See title **LONDON FIRE BRIGADE**.

(*d*) 13 Statutes 1006.

(*f*) Model Bye-Laws Series XIII. c.

(*h*) S. 83; *ibid.* 70.

(*e*) *Ibid.*, 1007.

(*g*) S. 71 (1); 18 Statutes 67.

(*i*) S. 71 (2) and (3).

(*k*) 26 Statutes 178.

FIRE STATIONS

See FIRE PROTECTION.

FIREWORKS AND FIREARMS

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See also title : EXPLOSIVES.

Discharge of.—At common law a person discharging a firearm near a highway may be indicted for nuisance (*a*) ; it may be an offence to go about armed (*b*), and an offender may be indicted for this offence under the Statute of Northampton, 1328 (*c*).

Sect. 47 of the Stage Carriages Act, 1832 (*d*), contained a provision as to the discharge of firearms by the guard of a stage carriage ; but the whole Act was repealed as to public service vehicles by the Road Traffic Act, 1930 (*e*).

Wantonly to fire off a gun or pistol or to set fire to or wantonly to let off or throw a squib, rocket, serpent or other firework whatsoever, within 50 feet of the centre of any carriageway or cartway to the injury of the highway, or to the injury, interruption or personal danger of any person travelling thereon, is an offence for which a fine not exceeding 40s. may be imposed, over and above the damages occasioned thereby (*f*). [194]

The wanton discharge of any firearm or the throwing or setting fire to any firework to the annoyance or danger of residents or passengers in any borough or urban district is an offence, for which the penalty is a fine not exceeding 40s. or, in the discretion of the justice, imprisonment not exceeding fourteen days (*g*). A constable, or other officer duly authorised, is empowered to take into custody, without warrant, any person who within his view commits any such offence (*g*). These enactments are virtually superseded as respects fireworks by sect. 80 of the Explosives Act, 1875 (*h*), which renders a person liable to a fine of not exceeding £5, if he throws, casts or fires any fireworks (*i*) in or into any street, thoroughfare or public place. In addition, the offender

(*a*) *R. v. Moore* (1832), 2 B. & Ad. 184 ; 26 Digest 428, 1476.

(*b*) *R. v. Meade* (1903), 19 T. L. R. 540 ; 36 Digest 177, 224.

(*c*) 4 Statutes 269.

(*d*) 19 Statutes 22.

(*e*) See Fifth Schedule ; 23 Statutes 695.

(*f*) Highway Act, 1835, s. 72 ; 9 Statutes 86. An order to pay damages would probably bar a civil action for damages subsequently arising ; see *Wright v. London General Omnibus Co.* (1877), 2 Q. B. D. 271 ; 21 Digest 228, 604. The provisions of the section appear to extend to firing when in pursuit of game ; *Harrison v. Rutland (Duke)*, [1893] 1 Q. B. 142, at p. 160 ; 15 Digest 830, 9111.

(*g*) Town Police Clauses Act, 1847, s. 28 ; 19 Statutes 38 ; P.H.A., 1875, s. 171 ; 13 Statutes 696. These provisions may also have been put in force by a local Act.

(*h*) 8 Statutes 431.

(*i*) "Fireworks" refers to things made for amusement ; *Bliss v. Lilley* (1862), 32 L. J. (M. C.) 3.

is liable to imprisonment in certain cases if by his act he endangers life or limb (*k*). After conviction for two offences and disregard of a prohibition by the justices, an offender is liable to imprisonment for a term not exceeding six months (*l*). [195]

Purchase and Use of.—A person must not purchase, have in his possession, use or carry a firearm, unless he holds a certificate, available for three years, to be issued by the chief officer of police of the district in which he resides (*m*). An appeal against a refusal to grant or vary or renew a certificate lies to a court of summary jurisdiction (*n*).

Gunsmiths, dealers in firearms, common carriers, members of rifle clubs, officers of the post office, butchers, slaughtermen and knackers, and certain other persons are permitted to possess firearms without a certificate (*o*).

The Firearms Act, 1920, also contains provisions restricting the manufacture and sale of firearms (sect. 2); a prohibition of persons convicted of crime from carrying firearms (sect. 5); imposing penalties on the possession of firearms with intent to do injury (sect. 7); the registration of persons manufacturing or selling firearms (sect. 8); power to prohibit the removal for export of firearms (sect. 9); provisions as to forfeiture of firearms and cancellation of certificates, search warrants and other matters (sect. 11).

A person under the age of seventeen years may not purchase or hire a firearm or ammunition, and no firearm or ammunition may be sold to such a person if the vendor knows or has reasonable ground for believing him to be under seventeen years. The offence is punishable by a fine not exceeding £20, or imprisonment with or without hard labour for a period not exceeding three months, or to imprisonment and fine (*p*). [196]

By a provision in sect. 1 of the Firearms Act, 1934 (*q*), a person under fourteen years of age must not have in his possession, use or carry, a firearm or ammunition, and no person may give, lend, or transfer or part with the possession of a firearm or ammunition to a person whom he knows, or has reasonable ground for believing, to be under the age of fourteen. The penalty for a contravention is similar to that given above.

The definition of "firearm" in sect. 12 of the Act of 1920 (*r*) was also amended by sect. 1 (2), (3) of the Act of 1934, with the result that a smooth bore shot-gun or air-gun or air-rifle, and ammunition for any such gun or rifle, if it is a lethal weapon, is to be deemed a firearm for the purposes of the new sect. 3 (1A) of the Act of 1920, and cannot therefore be sold or let to a person under seventeen, whereas such a gun or rifle, and ammunition for it, may be used or carried by a young person between the ages of fourteen and seventeen years without contravening the new sect. 3 (1B) of the Act of 1920, unless it is of a type declared by rules of the Home Secretary to be specially dangerous (*s*).

(*k*) Explosives Act, 1875, ss. 79, 80; 8 Statutes 431.

(*l*) *Ibid.*, s. 91; *ibid.*, 434.

(*m*) Firearms Act, 1920, s. 1 (1); 19 Statutes 722.

(*n*) *Ibid.*, s. 1 (4), (5).

(*o*) *Ibid.*, s. 1 (8) proviso; 19 Statutes 723.

(*p*) S. 3 (1); *ibid.*, 725; as replaced by s. 1 (1) of the Firearms Act, 1934; 27 Statutes 716.

(*q*) 27 Statutes 716. This becomes s. 3 (1B) of the Firearms Act, 1920.

(*r*) 19 Statutes 730.

(*s*) The position is somewhat complex—see Report of Departmental Committee on Statutory Definition of Firearms, etc. (Cmd. 4758), p. 8.

A person using or carrying a gun must take out yearly a licence under sect. 3 of the Gun Licence Act, 1870 (*t*), for which 10*s.* is charged. As to the licences, see title LOCAL TAXATION LICENCES. [197]

Fireworks may not be sold to any child apparently under the age of thirteen, and a fine not exceeding £5 may be imposed (*u*).

A person found drunk in possession of any loaded firearms may be apprehended and is liable to a penalty not exceeding 40*s.* or imprisonment for one month with or without hard labour (*a*). Firearms may not be sold to, or repaired, proved or tested for a person who is drunk or of unsound mind, under a penalty not exceeding £20 or three months imprisonment with or without hard labour (*b*). [198]

Sect. 1 of the Firearms and Imitation Firearms (Criminal Use) Act, 1933 (*c*), imposes a penalty where persons use or attempt to use firearms or imitation firearms to avoid arrest, the maximum punishment being penal servitude not exceeding fourteen years.

Sect. 2 of the Act also provides for a penalty if a person is in possession of firearms or imitation firearms in certain cases when committing an offence under certain sections of the Malicious Damage Act, 1861, the Offences against the Person Act, 1861, the Prevention of Crimes Act, 1871, the Larceny Act, 1916, or the Road Traffic Act, 1930, or aiding or abetting the commission of any such offence.

Under sect. 4 of the Act, a firearm or imitation firearm, whether capable or not of discharging a missile, is an offensive weapon or instrument for the purposes of ss. 23 and 28 (1) of the Larceny Act, 1916 (*d*). [199]

Manufacture of Fireworks.—As to the exemption of small firework factories from the Explosives Act, 1875 (*e*), see title EXPLOSIVES at p. 396 of Vol. V. [200]

London.—Sect. 54 (15) of the Metropolitan Police Act, 1839 (*f*), provides that if, within the metropolitan police district (*g*) a person in any thoroughfare or public place wantonly discharges any firearm or throws or sets fire to any firework he is liable to a penalty of 40*s.*, and a constable may take into custody without warrant any person committing such an offence. A person may not discharge a cannon or other firearm of greater calibre than a fowling piece within 300 yards of a dwelling-house within the district to the annoyance of any inhabitant of it, and if he does so after being warned of the annoyance by any inhabitant he is liable to a penalty not exceeding £5 (*h*).

Sects. 35 (15) and 36 of the City of London Police Act, 1839 (*i*), contain similar provisions for the City of London. [201]

(*t*) 8 Statutes 1093.

(*u*) Explosives Act, 1875, ss. 31, 39, and see definition of "explosives," s. 104; 8 Statutes 403, 409, 439.

(*a*) Licensing Act, 1872, s. 12; 9 Statutes 939; Licensing Act, 1902, s. 8; 9 Statutes 967. A person may properly be apprehended if there is reasonable suspicion that an offence has been committed. *Trebeck v. Croudace*, [1918] 1 K. B. 158, C. A.; 14 Digest 183, 1622; *Isaacs v. Keech*, [1925] 2 K. B. 354; Digest (Supp.).

(*b*) Firearms Act, 1920, s. 4; 19 Statutes 726.

(*c*) 26 Statutes 87.

(*e*) 8 Statutes 385.

(*d*) 4 Statutes 826, 828.

(*f*) 19 Statutes 121.

(*g*) As to the extent of the metropolitan police district, see Metropolitan Police Act, 1829, ss. 4, 34, and *ibid.*, 1839, s. 2; 12 Statutes 744, 756, 767 and S.R. & O., Rev. 1904, VIII., Metropolitan and City Police Districts, p. 1. See title Metropolitan Police District.

(*h*) S. 55; 19 Statutes 122.

(*i*) 2 & 3 Vict. c. xciv.

FIT PERSON, LOCAL AUTHORITY AS

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See also titles :

APPROVED SCHOOLS ;	INFANTS, CHILDREN AND YOUNG PERSONS ;
CARE AND PROTECTION OF CHILDREN	JUVENILE COURTS ;
AND YOUNG PERSONS ;	REFRACTORY CHILDREN.

The Statute and Rules.—The relevant statute is the Children and Young Persons Act, 1933 (*a*) ; and any reference to a section should in general be read as a reference to a section of this Act. The rules are the Children and Young Persons (Boarding Out) Rules, 1933 (*b*). It is important to note that rule 22 allows special arrangements to be made, with the consent of the Secretary of State, in exceptional circumstances where the local authority consider it desirable that the rules should not completely govern the case. [202]

Meaning of "Fit Person."—In certain circumstances a court may under sect. 57 of the Act commit a child or a young person under the age of seventeen years to the care of a fit person, whether a relative or not, who is willing to undertake the care of him. Under sect. 38 of the Children Act, 1908 (*c*), the term "fit person" included certain societies and bodies corporate for the protection of children, but this definition has not been reproduced in sect. 76 of the Act of 1933, which, however, expressly provides that the local authority (*d*) shall for the purposes of making orders of committal be deemed to be a fit person and that local authorities may undertake the care of children and young persons so committed. Where the local authority accept a

(*a*) 26 Statutes 172—252.

(*b*) S.R. & O., 1933, No. 787.

(*c*) 9 Statutes 813.

(*d*) As to the local authority, see ss. 96—98 of the Act. In general, the local education authorities for elementary education are the local authorities as respects children, and the councils of counties and county boroughs as respects other persons, but the attainment of the age of fourteen years by a child does not involve a transfer of responsibility from the local education authority.

child or young person under such an order it will board him out with foster-parents, in accordance with the Rules of 1933 already mentioned. See also *post*, pp. 99, 100. [203]

Effect of Order of Committal to Fit Person.—Such an order normally remains in force until the child or young person attains eighteen years (sect. 75 (3)), but it may in certain circumstances be varied or revoked under sect. 84 (6) (e). While the order remains in force the person to whom the child or young person is committed has the same rights and powers as a parent and is subject to the same liability for maintenance (sect. 75 (4)). Even if the real parent or any other person claims the custody of the child or young person the “fit person” is entitled to retain custody and control by virtue of the order (*ibid.*). [204]

Religious Persuasion.—Before making the order the court is to ascertain if possible the religious persuasion of the child or young person (f), and it will as far as is practicable select a person of his faith, or a person who undertakes to bring him up in that faith (sect. 75 (1)). A local authority can give such an undertaking, but they are obliged to select if possible a foster-parent who is of the same religion as the child or young person or who undertakes to bring him up in it (g). Any failure to bring up a child or young person in accordance with his religion may be the subject of an application to the court (h). [205]

Grounds of Committal. Offenders.—Upon a child or a young person under seventeen years of age being found guilty by any court of an offence for which an adult would be punished by imprisonment (i) the court may make an order committing him to the care of a fit person who is willing to receive him under such an order (sect. 57). In these cases the court can also, if it thinks fit, make a probation order (*ibid.*). [206]

Care or Protection Cases.—Where a child or young person is found by a juvenile court to need care or protection within the meaning of sect. 61 of the Act (as to which, see title CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS) and in the circumstances described in sect. 63 when, before any other court, a person is convicted of an offence mentioned in the First Schedule to the Act or under sect. 10 in respect of a child or young person, the court may make an order committing the child to the care of a fit person willing to receive him (sects. 62, 63). In such cases, the court may also order him for a specified period, not exceeding three years, to be under the supervision of a probation officer or other person appointed by the court (sects. 62 (1) (d), 63). Such supervision is analogous to probation, though of course there is no question of a recognisance or a breach of it. See sect. 66 as to its nature and as to subsequent proceedings in the interests of the child or young person. [207]

After Supervision Order.—If a child or young person has been placed under the supervision (not on probation as an offender) of a probation

(e) See also *post*, p. 100.

(f) On this question of religious persuasion, see a note at p. 86 of Clarke Hall and Morrison's Law Relating to Children and Young Persons and the cases there cited.

(g) S. 84 (3) and Children and Young Persons (Boarding Out Rules), 1933, rule 14.

(h) S. 84 (7), and see under “Revocation or Variation of Order,” p. 100.

(i) This means, obviously, punishable by imprisonment without the option of a fine.

officer or other person under sect. 62 or sect. 63 of the Act, the probation officer or other person exercising supervision may, at any time while the order is in force and the child or young person is under seventeen years of age, bring him before a juvenile court if it appears necessary in the child's or young person's interests, and the court may commit him to the care of a fit person willing to receive him, or order him to be sent to an approved school (sect. 66 (1)). [208]

Education Act Cases.—When a school attendance order has been made under sect. 44 of the Education Act, 1921 (*k*), and the order is not complied with, without reasonable excuse, then, in certain circumstances, the child may be committed to the care of a fit person willing to receive him (*l*). [209]

Contributions towards Maintenance.—A court which makes an order of committal to the care of a fit person may, under sect. 87, at the same time make an order upon certain persons to contribute towards the maintenance. If the order be not made at the time of committal it may be made subsequently (after complaint and summons) by any court of summary jurisdiction for the place in which such persons reside (*m*). Under sect. 86 (1) the persons liable to contribute are the father or stepfather of the child or young person, his mother or step-mother, and any person who, at the time the order of committal is made, is cohabiting with the mother, whether or not he is the putative father. There is nothing in the statute to prevent the making of more than one contribution order. The weekly sum ordered is to be such as the court considers suitable having regard to means (sect. 87 (1)), but the total weekly contributions under such orders (including any sum paid under an affiliation order diverted under sect. 88 of the Act) must not exceed the sum prescribed by the Home Secretary (*n*).

The contributions so ordered are to be payable, not necessarily direct to the local authority to whose care the child or young person has been committed, but to the council of the county or county borough within which the person liable to contribute is for the time being residing (sect. 86 (3)). That council is under a duty to pay them over to the Secretary of State in such manner and at such times as he may prescribe, subject to a deduction of 10 per cent. (*o*) in respect of the services so rendered (*ibid.*). The Secretary of State deals with these sums as appropriations in aid of grants under the Act.

A contribution order, which is enforceable as if it were an affiliation order, remains in force as long as the order of committal is in force, and sect. 30 of the Criminal Justice Administration Act, 1914 (*p*), which deals with periodical payments under orders of courts of summary jurisdiction, applies to all such orders, even if not made by a court of summary jurisdiction (*q*). Such orders may, therefore, upon fresh evidence, be revoked, revived or varied. The powers of courts of

(*k*) 7 Statutes 154.

(*l*) See the new s. 45 of the Education Act, 1921, substituted by the Third Schedule to the Act of 1933; and see Vol. V., p. 313.

(*m*) S. 87 (1). In this case the application will be made under s. 87 (2) by the county or county borough council entitled to receive the contributions.

(*n*) Under the Children and Young Persons (Parental Contributions) Regulations, 1933 (S.R. & O., 1933, No. 956), the sum fixed in the case of a committal to a fit person is 13s. a week.

(*o*) See the Children and Young Persons (Collection of Parental Contributions) Regulations, 1933 (S.R. & O., 1933, No. 1022).

(*p*) 11 Statutes 383.

(*q*) Act of 1933, s. 87 (4).

summary jurisdiction are to be exercised only by justices acting for the place where the person liable is for the time being residing (*qq*). [210]

By sect. 88 of the Act of 1933, when an illegitimate child or young person is committed to the care of a fit person, and there is an affiliation order in force for his maintenance, the court ordering the committal may at the same time order the payments under the affiliation order to be made to the appropriate county or county borough council; and if such an order is not made at the same time as the committal it may be made subsequently by any court of summary jurisdiction acting for the place in which the putative father is residing. Here again the powers under sect. 30 of the Criminal Justice Administration Act, 1914 (*r*), are to be exercised only by courts of summary jurisdiction for the place where the putative father is residing. The making of such an order with regard to an affiliation order relieves a putative father who is living with the mother (at the date of the committal order) from his obligation to make contributions towards maintenance only to the extent of any sums actually paid under the affiliation order (sect. 88 (3)). The making of such an order is not to extend the duration of an affiliation order; and, except as respects the recovery of arrears, the affiliation order is not to remain in force after the fit person order has ceased to be in force, unless the mother or other person entitled, under sect. 3 of the Affiliation Orders Act, 1914 (*s*), to make application, applies for its revival (sect. 88 (4)).

A person on whom a contribution order is made (including the putative father where payments under the affiliation order are diverted as described above) must forthwith give notice of change of address to the person who was immediately before the change entitled to receive contributions, under a penalty of not exceeding two pounds (sects. 87 (5), 88 (2) (c)). Presumably a local authority ceasing to receive payments will notify the local authority becoming entitled to receive them. [211]

The Secretary of State has power to remit the whole or any part of any payment ordered to be made under a contribution order or under an affiliation order which under sect. 88 has been dealt with (sect. 89 (1)).

As stated above, the local authority entitled to receive payments under such orders is the council of the county or county borough within which the person liable to contribute is for the time being residing. By sect. 89 (2) the council in whose area he is residing is entitled to receive and give a discharge for, and enforce payment of, any arrears, even though they may have accrued when the person liable was not resident in that area. For the purpose of proceedings under sect. 87 or 88, a certificate purporting to be signed by the clerk of a council for the time being entitled to receive payments, or by some other authorised officer, stating that a sum due to the council is overdue and unpaid, is evidence of the facts stated therein (sect. 89 (3)).

If a child or young person committed to the care of a fit person is removed from the care of a person who is entitled to money under a trust in respect of the maintenance of the child or young person, the court making the order may further order the whole or any part of the sums so payable to be paid to the person to whose care the child or young person is committed, to be applied for the child or young person's

benefit in such manner as the court, having regard to the terms of the trust, may direct (sect. 91). An appeal from such an order, if made by a court of summary jurisdiction, lies to quarter sessions (*ibid.*). [212]

Boarding Out.—A local authority to whose care a child or young person is committed may board him out for such periods and on such terms as to payment and otherwise as they think fit, subject to compliance with the rules of the Secretary of State (sect. 84 (3)). The expense of boarding out is payable out of local funds subject to a Government grant (sects. 96 (3), (4), 104).

The rules (t) require the local authority to board out children and young persons with a suitable foster-parent as soon as possible. Not more than two foster-children are to be boarded out in the same home at the same time unless they are brothers or sisters or brothers and sisters; nor can more than one foster-child be boarded out in a home where any other child or young person is placed with the foster-parent either temporarily or permanently (rules 5, 6). Further, a foster-child is not to be boarded out in a home where there are more than four other children or young persons, or in a home in which more than one other child or young person is placed (rules 6, 7). [213]

Rules 8 and 9 impose restrictions upon the persons with whom the local authority may board out children. A person who has received poor relief within the twelve months preceding cannot be a foster-parent; and if a foster-parent receives such relief all foster-children must be removed from his care. A foster-child may not be boarded out with, or remain with, a person who has at any time been convicted of an offence which renders him unfit to be a foster-parent, or with a person occupying or residing in a house or premises licensed for the sale of intoxicating liquor. Under rule 11, a foster-parent must sign a form of undertaking (scheduled to the rules) as to the proper treatment and upbringing of the child or young person. This form of undertaking includes a promise to give up possession of the child upon the demand of the local authority. Before the foster-child is boarded out a certificate of a medical officer must be obtained as to his bodily and mental condition and his suitability for boarding out (rule 10).

Foster-parents must, on receipt of a foster-child, give a written acknowledgment of having received him and any articles of clothing sent with him (rule 12). They must not become, or continue to be, party to any contract for the purpose of insurance for the payment of money to them upon the illness or death of the foster-child (rule 13). If the local authority have reason to think this provision is being infringed they must immediately withdraw the foster-child. [214]

Supervision and Visiting.—The local authority are required by rule 15 to arrange for every foster-child to be visited at least once every three months, and to be visited within the first month of his being boarded out. In addition, a foster-child may be visited at any time by a H.O. inspector appointed under sect. 103 of the Act (rule 18). Local authorities may arrange for their own visits to be carried out by an officer appointed for the purpose or by a member of a committee appointed under rule 16, which provides that if a number of foster-children are boarded out in the same locality the local authority shall if practicable appoint a committee of not less than three persons, at least one of whom is to be a woman, and one or more of them must

(t) Children and Young Persons (Boarding Out) Rules, 1933 (S.R. & O., No. 787). N.B.—Rule 22 allows a relaxation of the rules in particular cases.

visit every foster-child and make such other arrangements as may be entrusted to them for the care and supervision of the children. If the locality where the foster-children are boarded out is outside the area of the local authority, then, instead of appointing their own committee, the local authority may make an arrangement with the local authority for the other locality (rule 16). [215]

Medical Care.—Under rule 19, the local authority must arrange that medical and dental treatment is available for every foster-child. Within a month of his being boarded out, a foster-child is to be examined and reported upon to the local authority by the doctor who is to be responsible for him. [216]

Employment.—A foster-child who by reason of his age is no longer required to attend a public elementary school may be placed in suitable employment by the local authority, who must, in making the arrangements, consult the foster-parent if it be desirable (rule 20). If a foster-child placed in employment can no longer conveniently live with the foster-parent, the local authority must make suitable arrangements for his care and supervision (rule 21). [217]

Emigration.—The emigration of a foster-child can be arranged only with the authority of the Home Secretary, who must be satisfied that the foster-child consents and that, if it be practicable, his parents have been consulted, and, further, that emigration will be for the benefit of the foster-child (sect. 84 (5)). [218]

Subsequent Committal to Approved School.—Application may be made by the local authority to whose care, as fit person, a child or young person has been committed, to a juvenile court to send him to an approved school, provided he is still under seventeen years of age (sect. 84 (8)). It would seem proper that the child or young person, as well as his parent or guardian, should be heard on the question before any order is made. If the juvenile court thinks it desirable in the interests of the child or young person it may order him to be sent to an approved school (sect. 84 (8)). See title APPROVED SCHOOLS. [219]

Revocation or Variation of Orders.—The power in sect. 84 (6) to revoke or vary an order for committal to a fit person is wide. Any person may make application, though probably a court would not act unless satisfied that the applicant was a proper person to be heard on the question and *bona fide* interested in the child or young person. Application to revoke or vary must always be made to a juvenile court. If the order was made by a court of summary jurisdiction (*u*), application is to be made to a juvenile court acting for the same petty sessional division or place; if it was made by any other court, such as a court of assize or quarter sessions, then to a juvenile court acting for the petty sessional division or place in which the child or young person is residing (sect. 84 (6)).

A special duty to revoke or vary on religious grounds, upon the application of the parent (*w*) or guardian or any near relative, is imposed on the court by sect. 84 (7). If a juvenile court having power to vary or revoke the order is satisfied that the child or young person is not

(*u*) This includes a juvenile court, see s. 45 of the Act.

(*w*) "Parent" does not ordinarily include the father of an illegitimate child in respect of whom no affiliation order has been made (*Builer v. Gregory* (1902), 18 T. L. R. 370; 15 Digest 856, 9400), and indeed it is a general principle that a putative father has no status as parent unless a statute confers it. "Relative" usually means a legitimate relative, but may include illegitimate relatives (see *Seale-Hayne v. Jodrell*, [1891] A. C. 304; 44 Digest 821, 6720, and other cases).

being brought up according to his religious persuasion, the court must revoke the order or vary it as may be best calculated to secure his being so brought up in future, unless a satisfactory undertaking is offered by the person to whom he has been committed.

The proper procedure would seem to be by way of summons addressed to the child or young person and the "fit person," to show cause why the order should not be varied or revoked. In some cases the child may be too young to be of sufficient understanding to take part in the proceedings. In other cases there may be a dispute between relatives, in which event both sides should be given an opportunity of being heard. [220]

Discharge from Custody of Fit Person.—The Home Secretary may discharge a child or young person from the care of a person to whose care he has been committed, either absolutely or subject to conditions (sect. 84 (4)). [221]

Escape from Fit Person.—If a child or young person runs away from a person to whose care he has been committed or from a person with whom he has been boarded out by a local authority, he may be apprehended without warrant, apparently by any person (sect. 85 (1), (2)). If he has run away from the "fit person" (so far as a local authority is concerned, this might arise before it became possible to board him out) he may be brought back to that person if he (or if it be the local authority, that authority) is willing to receive him. If he be not so received, he must under sect. 85 (1) be taken before a juvenile court, which can then make any order which it might make in respect of a child or young person, who, having no parent or guardian, was beyond control (a). The juvenile court before which he is to be brought must be, if the original order of committal was made by a petty sessional court (which includes a juvenile court), a court acting for the same petty sessional division or place; while if the original order was made by some other court, it must be a juvenile court acting for the place where he was residing when he ran away (sect. 85 (1)). If, however, the child or young person has run away from a person with whom he was boarded out, he may be taken back to that person or to such other person as the local authority may direct (sect. 85 (2)). Persons who, knowingly, assist or induce such escapes, harbour or conceal such children and young persons, or prevent them from returning, are liable under sect. 85 (3) to fine and imprisonment (b). [222]

Interim Orders.—When a child or young person is brought before a juvenile court, otherwise than as an offender, and the court is not in a position to decide at once what order it should make, it may, under sect. 67 (2), make an interim order, which is to last not more than twenty-eight days but may be followed by a further interim order, detaining him in a place of safety or committing him to the care of a fit person, whether a relative or not, who is willing to receive him. Such an order is really in the nature of a remand, which word is used in the marginal note to the section. [223]

Similarly, when an approved school order has been made but is not to take effect immediately, or cannot take effect on the date proposed for his conveyance to the school, one method of disposing of the child

(a) As to these orders, see ss. 61, 62 of the Act.

(b) While harbouring would seem to imply actual physical shelter, concealing may be held to include hiding the child's whereabouts from those who are entitled to know, even though the child be not under the control of the person so concealing.

or young person is his committal under sect. 69 (2) to the custody of a fit person. There is a similar limit of twenty-eight days' duration. This provision applies to offenders as well as to the other classes of juveniles brought before a court.

These orders, being temporary, cannot be subject to the same obligations, or carry the same consequences, as an order of committal which is the final decision of the court, and not a mere remand. For instance, it is obvious that there can usually be no boarding out, that the question of contributions for maintenance will not be raised, and that possibly even the matter of religious persuasion will not at that stage be finally settled by the court. It would seem that a local authority might, in suitable cases, act as a "fit person," but actually the place to which the court would consign a child or young person under sect. 69 (2) would probably be a "place of safety" (c), and the form of the order would be that of detention in a place of safety, and not committal to a fit person, which, for these purposes, would generally be an individual. [224]

Appeal.—From an order made by a court of summary jurisdiction committing a child or young person to the care of a fit person, or placing him under supervision, there is a right of appeal to quarter sessions by the child or young person or by his parent or guardian on his behalf (sect. 102). Under the same section, there is also a right of appeal to quarter sessions by any person against whom an order is made to contribute in respect of a child or young person; and, in the case of an order requiring all or any part of the payments under an affiliation order to be paid to some other person, by the person who would, but for the order, be entitled to the payments (e.g. the mother of the child). As to the effect of the Summary Jurisdiction (Appeals) Act, 1933, and generally as to the course to be followed, see title APPEALS TO THE COURTS.

Where it is desired to appeal upon a question of law there is also a right to apply to the court of summary jurisdiction to state a case for the opinion of the High Court under the provisions of the Summary Jurisdiction Acts. See title CASE STATED. [225]

London.—The local authority in London for the purposes of the Act is the L.C.C., as the local education authority (sect. 96), with the following exceptions. Sect. 97 of the Act provides that as regards the City the Common Council are to have the powers and duties of a local authority as regards young persons, and as regards street trading and employment; the expenses are to be borne out of the city general rate, but nothing in the section is to exempt the city from liability to contribute to the expenses of the L.C.C., and the L.C.C. are to repay the contributions paid by the city in respect of persons in the care of the managers of an approved school. Under the 2nd Sched. to the Transfer of Powers (London) Order, 1933 (d), the duties of a local authority as to infant life protection under the Children Act, 1908, Part I., as amended by the Children and Young Persons Act, 1932, Part V., were transferred to the metropolitan borough councils from the L.C.C., the common council being already the local authority under sect. 10 of the Act of 1908 (e). [226]

(c) See the definition in s. 107 of the Act.

(d) S. R. & O., 1933, No. 114; 26 Statutes 613.

(e) 9 Statutes 799.

FIXED GRANT PERIOD

See GENERAL EXCHEQUER GRANTS.

FLAG DAYS

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See also titles : HIGHWAY NUISANCES; POLICE.

Powers of Police Authorities.—This subject is dealt with by the Police, Factories, etc. (Miscellaneous Provisions) Act, 1916 (*a*). Sect. 5 of this Act empowers a police authority (*b*) to make regulations controlling the collection of money or the selling of articles for the benefit of charitable or other purposes, in any street or public place. "Street" is defined in the section as including any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not, but "public place" is not defined in the Act (*c*). It will be observed that the regulations can only apply to collections made "in" any street or public place. Difficulties have sometimes arisen with regard to collections made on premises adjoining streets, which the Act would not appear to cover, though this point has not yet been decided by the courts.

If the flag day is in aid of a "war charity" within the meaning of the War Charities Act, 1916, the charity must be registered with the registration authority (*d*). [227]

Regulations.—The regulations made by the police authority are to be submitted to the Home Secretary for confirmation, and they are to be published before confirmation for such time and in such manner as he may direct. Any person acting in contravention of the regulations is liable to a fine of not exceeding 40s. on summary conviction, increased to £5 in the case of a second or subsequent offence. The regulations are not to apply to the selling of articles in the ordinary course of trade and for

(*a*) 12 Statutes 864.

(*b*) This expression is not defined in the Act, but should apparently be read in the light of the definition of "police authority" in s. 1 (5) of the Police Reservists (Allowances) Act, 1914 (12 Statutes 861), as meaning in the City of London the Common Council, in the metropolitan police district the Home Secretary, and elsewhere the standing joint committee of a county or watch committee of a borough with a separate police force. As to the regulations in force in the metropolitan police district and the City of London, see "London," *post*, p. 104.

(*c*) The definition of "street" in s. 1 (4) of the Street Betting Act, 1906 (8 Statutes 1171), is identical. "Public place" is defined by Act of 1906 as including "any public park, garden, or seabeach, and any unenclosed ground to which the public, for the time being, have unrestricted access," with an addition to cover enclosed places to which the public have a restricted right of access. *Cf.* the definition of "public place" under the Metropolitan Streets Act, 1903, referred to *post*.

(*d*). See Vol. III., pp. 114—119, title CHARITIES.

the purpose of earning a livelihood, where no representation is made by or on behalf of the seller that a part of the proceeds will be devoted to a charitable purpose. [228]

Local Practice.—Regulations made under this Act have been found to be of value by police authorities, as abuses have arisen. The regulations can check fraud by requiring collectors to carry a written authority, to be produced to constables on demand, by requiring the use of sealed collection boxes bearing the name of the charity, and by prohibiting the payment of a fee to collectors. More effective control can be established by empowering the police to limit the area in which the collection can take place, and its duration. Obstruction can be lessened by the provision that not more than two collectors are to work together and that no large tables or boxes on the ends of poles are to be used. The regulations also usually provide that no animals shall accompany the collectors, and that no collector shall be employed who is under the age of sixteen. The organisers are required to send to the police authority proper accounts of the amounts taken and of the expenses incurred, forms for the return sometimes being prescribed. Many collections hardly do more than pay expenses. Some local councils of social service have considered the amalgamation of flag days so that only one or two appeals will be made to the public in a year. [229]

London.—In London, sect. 1 of the Metropolitan Streets Act, 1903 (*e*), also allows the Commissioners of the City and Metropolitan Police, with the approval of the Home Secretary, to make regulations as to street collections taking place within the City of London or within six miles of Charing Cross (*f*). The Act of 1903 is to be construed as one with the Metropolitan Streets Act, 1867. Sect. 3 of the latter Act (*g*) includes royal parks in the definition of "public place." Regulations under sect. 5 of the Act of 1916 have also been made for the metropolitan police district by the Home Secretary as the police authority for that district (*h*). The Common Council of the City of London also made regulations in December, 1926.

The Home Secretary's regulations of 1926 provide, *inter alia*, that all applications for permits shall be referred to an Advisory Committee appointed by the Commissioner of Police of the Metropolis and approved by the Secretary of State, and that after the collection duly audited statements of the receipts and expenses shall be forwarded to the commissioner, and that the commissioner may require to be satisfied as to the due and proper application of the proceeds. In 1922 the Commissioner of the City Police also made regulations applicable to the City of London under the Act of 1903, but these do not rank as S.R. & O. [230]

(*e*) 19 Statutes 169.

(*f*) Regulations were made by the Police Commissioner for the Metropolis and were approved by the Home Secretary in 1928. See S.R. & O., 1928, No. 138. The regulations of 1928 apply to such parts of the metropolitan police district as are within six miles of Charing Cross; those of 1926 apply to the whole metropolitan police district. The Regulations of 1926 apply to the sale of articles as well as the collection of money, and make provision for an increased penalty for a second or subsequent offence—a provision omitted in the Regulations of 1928.

(*g*) 19 Statutes 154.

(*h*) S.R. & O., 1926, No. 848.

FLANNELETTE

See FABRICS, MISDESCRIPTION OF.

FLATS

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For powers of local authority to erect flats, to convert existing houses into flats and rehouse displaced persons in flats, see title HOUSING.

For powers of local authority to make a closing order in respect of a flat and to make bye-laws in respect of flats, see title INSANITARY HOUSES.

Introduction.—In this title the expression “flat” means any part of a building which is occupied, or intended to be occupied, as a separate dwelling (*a*). A local authority have many powers in connection with flats, most of which are identical with, or comprised in, their powers in connection with houses generally; see titles mentioned as cross references. The following matters relate exclusively to flats. [231]

Power of Local Authority to Refund Rates.—On the conversion of an existing house into two or more flats it is probable that the aggregate rateable value of the flats after conversion will be greater than that of the house before conversion; and this fact may well serve to discourage the owner from converting. The Legislature has accordingly given (*b*) to a local authority (*c*) a power in such cases to undertake to refund to the person by whom the rates on any such flats are payable after conversion, the whole or any part of the difference between what he actually pays and the amount which he would have had to pay if the rateable value of the flat were reduced, so that this reduced value bears to the actual value the same proportion as the rateable value of the house before conversion bears to the aggregate rateable value of the separate flats. Suppose a house with a rateable value of £100 is converted into three flats the rateable values of which are £30, £60 and £60. To calculate the amount of the rates that may be refunded in respect of

(*a*) Cf. definition of “house” in Housing Act, 1930, s. 62 (2); 23 Statutes 435.

(*b*) By Housing Act, 1925, s. 92 (1) (*c*); 13 Statutes 1054. Hitherto, this power has rarely been exercised by councils.

(*c*) Outside London the power is given to county councils, county borough councils and county district councils, and in London exclusively to the L.C.C.; see Housing Act, 1925, ss. 80, 92 (1), (5); 13 Statutes 1045, 1054, 1055.

the £30 flat, its rateable value must first be reduced to an amount which is calculated thus, x being the reduced value :

$$\frac{x}{\text{rateable value of flat}} = \frac{\text{rateable value of house}}{\text{total rateable value of flats}}$$

$$\text{i.e. } \frac{x}{30} = \frac{100}{150} \therefore x = \text{£}20.$$

So the person liable for the £30-a-year flat may receive a refund of the whole or any part of the difference between what he actually pays and what he would have paid had the value of the flat been £20 instead of £30. [232]

The relief is given by the local authority undertaking to make a refund during such period, not exceeding twenty years, as is specified in the undertaking. If the undertaking is given for a fixed sum, a subsequent reduction in the rateable value of the flat may mean the authority undertaking to refund a greater sum than is proper. Accordingly it is thought that the undertaking should relate to the whole or a fixed fraction of the difference in question.

Before giving any undertaking the authority must satisfy themselves that the flat will, after conversion, be fit for human habitation (*d*) ; and that its superficial area will not be less than 550 superficial feet, calculated in accordance with the rules made by the M. of H. (*e*).

This power can be exercised only subject to such conditions as may be approved by the Minister.

It is expressly provided (*f*) that a county council may not borrow sums payable under any such undertaking, and it is thought that the borrowing powers given (*g*) to other local authorities are not wide enough to enable them to do so. [233]

Power to Relieve from Covenant against Conversion.—When the conversion of a house into two or more flats is prohibited or restricted by the provision of a lease or of any restrictive covenant affecting the house (*e.g.* a covenant in a purchase deed), the county court has jurisdiction (*h*) to vary the terms of the lease or other instrument imposing the prohibition or restriction so as to enable the house to be converted. The application to the court may be made either by the local authority (*i*) or by any person interested in the house. The jurisdiction cannot be exercised unless it is shown that owing to changes in the character of the neighbourhood (*k*) the house cannot readily be let as a single tenement but could readily be let for occupation if converted into two or more tenements. The jurisdiction may extend to any house, and is not confined to houses which, if converted, would be suitable for the working classes (*l*). A further power of removing restrictive covenants is given by sect. 84 of the Law of Property Act, 1925 (*m*). [234]

(*d*) As to the meaning of this expression, see Housing Act, 1930, s. 62 (3) ; 23 Statutes 436.

(*e*) See circular of M. of H. (No. 520), dated August 20, 1924, para. 22.

(*f*) Housing Act, 1925, s. 85 (1) ; 13 Statutes 1049.

(*g*) By Housing Act, 1925, s. 84 (1) (*c*) ; 13 Statutes 1048.

(*h*) Under Housing Act, 1925, s. 102 ; 13 Statutes 1059.

(*i*) It is thought that outside London the local authority for this purpose is the council of the borough or district in which the house is situate.

(*k*) As to this, see *Alliance, etc., Co. v. Berton* (1923), 92 L. J. (K. B.) 750 ; 31 Digest 173, 3066.

(*l*) See *Johnston v. Maconochie*, [1921] 1 K. B. 239 ; 31 Digest 158, 2911.

(*m*) 15 Statutes 260.

The Effect of Bye-Laws on Conversion.—The conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, amounts to an erection of a "new building" (*n*). Accordingly the bye-laws with regard to new buildings will apply on such a conversion. The bye-laws should be carefully examined in the light of this consideration, for a bye-law that is reasonable and proper when applied to the erection of a new building in the ordinary sense of that term, may be unreasonable (and therefore void) when applied to the operation of conversion (*o*). Moreover, even if a bye-law is not so unreasonable in its application to conversion as to be void, it may well have the effect of discouraging conversion. For example, the bye-laws may contain elaborate provisions as to the structure of the floors of new buildings which may make it impossible to convert an existing house into flats without pulling up and relaying all the floors. [235]

London.—Sect. 6 of the Housing Act, 1925 (*p*) (bye-laws respecting houses divided into separate tenements), applies to the administrative County of London with the modification set out in sub-sect. (2) of the section, which is to the effect that bye-laws for securing stability and the prevention of and safety from fire shall be made and enforced by the L.C.C. throughout the administrative county. Other bye-laws are to be made and enforced by the Common Council as regards the City of London, and as regards the rest of London, to be made by the L.C.C. and enforced by the metropolitan borough councils. The bye-laws made by the L.C.C. may contain, either generally or as respects any particular metropolitan borough or any part thereof, modifications, limitations or exceptions as specified in the bye-laws. Any such bye-laws supersede all bye-laws made by metropolitan borough councils under sect. 94 of the P.H. (London) Act, 1891 (*g*), but metropolitan borough councils have power at any time after bye-laws have been made by the L.C.C., to make bye-laws under the above-mentioned sect. 94 with respect to any houses or parts of houses in their area let in lodgings or occupied by members of more than one family to which the bye-laws made by the county council do not apply. The L.C.C. has made bye-laws in conformity with the above-mentioned provisions (June 8, 1931).

For further information about the erection and maintenance of tenement houses in London, see the title **HOUSING**.

Provisions as to tenement houses are contained in the under-mentioned General Powers Acts of the L.C.C. :

Act of 1907 (sect. 78) (*r*)—as to supply of water in tenement houses.

Act of 1908 (sect. 7) (*s*)—as to accommodation for cooking of food in tenement houses.

Act of 1909 (sect. 16) (*t*)—as to accommodation for storage of food in tenement houses.

Act of 1927 (sect. 61) (*u*)—as to lighting of staircases of tenement buildings. [236]

(*n*) P.H.A., 1875, s. 159 ; 13 Statutes 691. See also P.H.A. (Amendment) Act, 1907, s. 23 (13 Statutes 919), where applied to a borough or district by order of M. of H. or Local Government Board.

(*o*) Cf. *Repton School (Governors) v. Repton R.D.C.*, [1918] 2 K. B. 133 ; 38 Digest 196, 324.

(*p*) 13 Statutes 1006.

(*r*) *Ibid.*, 1287.

(*t*) *Ibid.*, 1299.

(*g*) 11 Statutes 1076.

(*s*) *Ibid.*, 1290.

(*u*) *Ibid.*, 1397.

FLOODS

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See also titles :

CATCHMENT BOARDS ;
 CONSERVANCY AUTHORITIES ;
 DRAINAGE BOARDS ;
 DRAINAGE RATES ;
 LAND DRAINAGE ;

LEE CONSERVATORS ;
 SEA DEFENCE WORKS ;
 THAMES CONSERVATORS ;
 WATERCOURSES.

The functions of local authorities with reference to floods fall into two parts: firstly, the prevention of flooding and the prevention or regulation of building in areas liable to inundation; and, secondly, measures for the relief of the inhabitants of flooded areas, and for remedying or minimising the damage arising from floods. [237]

Land Drainage Act, 1930.—The arterial drainage of the country (apart from sewers and drainage works in the public health sense of those terms) is now controlled in most areas liable to flooding by the catchment boards established under the Land Drainage Act, 1930, and by drainage boards for the minor or internal drainage districts operating within the catchment areas (*a*). A certain number of drainage districts, not within catchment areas, are also controlled by drainage boards established or continued under the Act of 1930. The catchment areas are some forty-seven in number, and in some cases, such as the river Thames above Teddington Lock, and the river Lee catchment area, the functions of the catchment board are linked up with the functions of existing bodies of conservators; see sects. 79, 80 of the Land Drainage Act, 1930 (*b*), and titles CONSERVANCY AUTHORITIES, LEE CONSERVATORS, THAMES CONSERVATORS. Also the statutory powers, etc., of the L.C.C. are not prejudiced by the Act of 1930—see sect. 78. The bodies established under the Land Drainage Act, 1930, are *ad hoc* authorities, but, in the case of catchment boards, a large part of the revenue of the authority is raised by precepts on county and county borough councils, and these councils appoint a proportion of the members of each catchment board. For details as to these authorities reference should be made to the titles CATCHMENT BOARDS, DRAINAGE BOARDS, DRAINAGE RATES and LAND DRAINAGE. Briefly, it may be said

(*a*) See title LAND DRAINAGE.

(*b*) 23 Statutes 579—582. Sub-ss. (2) and (3) of s. 79 were repealed by the Thames Conservancy Act, 1932 (22 & 23 Geo. 5, c. xxxvii.).

that the functions of a catchment board are (1) the maintenance of a general supervision over the drainage of the catchment area and especially over the "main river"; (2) the construction of sea defence works or estuary works necessary to secure an adequate outfall for the main river (c).

County, county borough and county district councils may complain to the Minister of Agriculture under sect. 12 of the Act (d) that a catchment board have not exercised their powers for the purpose of maintaining the main river in a due state of efficiency, and failing a satisfactory explanation or the remedying of the complaint, the Minister may give directions to the catchment board thereon. Any of these councils may contribute under sect. 32 of the Act (e) to the expenses of a drainage board (including a catchment board) in executing and maintaining drainage works which are desirable in the interests of the public health of any area within the borough or district of the local authority, or for the protection of any highway. The contributing authority are to fix the amount of the contribution having regard to the public benefit to be derived from the works. [238]

Limited powers of requiring the clearing of watercourses for the protection of agricultural land are vested in county and county borough councils by sect. 50 (2) of the Act of 1930 (f), which enables these councils to exercise the powers of a drainage board under sect. 35 of the Act (g) as to land inside or outside a catchment area. Sect. 35 is an important provision imposing on a person having the control of a watercourse, or of the part of a watercourse in which an impediment to the proper flow of water exists, or, if the person having control is not known, the person occupying the land through which the impeded part of the watercourse flows, to put that part in proper order, but this duty is only imposed where agricultural land belonging to or in the occupation of some other person is injured by water, or is in danger of being so injured. The drainage board may serve a notice requiring the person in default to put the watercourse or part in proper order.

Councils of counties and county boroughs are also allowed by sect. 50 (1) (b) to exercise the powers of drainage boards under sect. 36 (enforcement of obligations to repair watercourses, bridges, etc.) and sect. 44 (prevention and removal of obstructions in watercourses). Further, under sect. 52 of the Act of 1930 (h), councils of counties and county boroughs can promote and execute works for the drainage of small areas.

The foregoing provisions give local authorities (and particularly county and county borough councils) a definite measure of control over circumstances likely to lead to flooding by inland waters, and some measure of control with regard to the sea and tidal waters. Apart, however, from the limited powers of catchment boards, noted *supra*, there is a remarkable absence of legislation enabling local authorities to undertake sea defence works, and, apart from special provisions in local Acts, a local authority's powers in this respect are substantially limited to the common law right of defending their property against encroachment by the sea, as in the case of owned or leased foreshore and adjacent lands, and to the execution of defences against flooding which are ancillary to other statutory purposes, such as the main-

(c) Act of 1930, ss. 6, 7 ; 23 Statutes 534, 535.

(e) *Ibid.*, 552.

(g) *Ibid.*, 554.

(d) 23 Statutes 539.

(f) *Ibid.*, 565.

(h) *Ibid.*, 566.

tenance of highways or the protection of esplanades, parks, pleasure grounds, etc. See title SEA DEFENCE WORKS. [239]

Nuisance Procedure.—Occasionally, the consequences of flooding can under some circumstances be treated as a nuisance under sects. 91, 94 of the P.H.A., 1875 (*i*), and it may then be possible thus to secure the execution of works for the prevention of further flooding (*k*). [240]

Cleansing, etc., of Watercourses.—A more direct method of controlling flooding by the exercise of powers under the P.H.As. is available in boroughs or urban districts in which Part V. (Watercourses, streams, etc.) of the P.H.A., 1925 (*l*), has been adopted, and in rural districts where these provisions have been applied by order of the M. of H. In particular, sect. 53 of the Act (*m*) enables the local authority to secure the repair and cleansing of culverts, and sect. 54 authorises a choked-up watercourse to be dealt with as a nuisance under sect. 91 of the P.H.A., 1875. These provisions do not appear to be of assistance where the trouble is the collapse of banks, as in *Clayton's Case*, except in so far as clearing the watercourse down-stream may lower the level of the water and reduce the pressure on the banks. See also title WATERCOURSES. [241]

Reservoirs.—A safeguard against a possible cause of serious floods is afforded by the Reservoirs (Safety Provisions) Act, 1930 (*n*), which (1) provides for supervision of the construction of large reservoirs (*i.e.* reservoirs capable of holding more than five million gallons of water above the natural level of any part of the land adjoining the reservoir); (2) requires periodical inspections of such reservoirs, whether constructed before or after the commencement of the Act; (3) requires the publication of certificates and reports and the supply of information (on request) to the council of any county, municipal or metropolitan borough or district likely to be affected by the escape of water from the reservoir. Any such council may apply to quarter sessions for the area in which the reservoir is situate for an order in respect of contraventions of the Act, or of failure to take measures stated in any statutory report to be necessary in the interests of safety. [242]

Building Bye-laws and Town Planning.—The bye-laws with respect to new buildings made under sect. 157 of the P.H.A., 1875 (*o*), often require low-lying sites which are liable to flood to be raised to a specified level before a new building is erected, or any such building to be so built that the floor of the lowest storey shall be above this level.

Much can be done by local authorities charged with the preparation of schemes under the Town and Country Planning Act, 1932 (*p*), and with the administration of interim development orders, to minimise the consequences of floods by the restriction or prohibition of building on areas liable to flood. [243]

(*i*) 13 Statutes 661, 663.

(*k*) *Clayton v. Sale U.D.C.*, [1926] 1 K. B. 415; 36 Digest 229, 702. The circumstances of that case, which arose from the collapse of a river wall, were peculiar and HEWART, L.C.J., carefully confined the effect of the decision.

(*l*) 13 Statutes 1187. If the population is below 20,000 the consent of the M. of H. is needed, see s. 3.

(*m*) 13 Statutes 1188.

(*n*) 23 Statutes 755.

(*o*) 13 Statutes 689.

(*p*) 25 Statutes 470.

Doncaster Act of 1929.—An interesting legislative experiment in the prevention of flooding is to be found in Part II. of the Doncaster Area Drainage Act, 1929 (*q*), which deals with the low-lying area around Doncaster where the land drainage situation has been rendered difficult by the working of coal mines and consequent subsidence of the surface. The Act places upon mineowners the responsibility for constructing and maintaining works required for obviating or remedying loss of efficiency in the drainage system and drainage works of the district, resulting from mining subsidence. Mineowners are required to establish and maintain a maintenance fund, and may make deductions for the purposes of their statutory obligations from money due to royalty owners. This statute deserves careful study in areas where works executed for private profit or by statutory undertakers may jeopardise land drainage or increase risk of flooding. [244]

Measures in Event of a Serious Flood.—On a serious flood occurring it is essential that the various local authorities involved should co-operate closely. The essential steps are: (1) the removal of the displaced population to places of safety, and the housing and feeding of such persons as cannot rely on their own resources; (2) the preservation of order, prevention of looting, and the diversion of traffic from the flooded area and from unsafe roads and bridges; (3) the control of water supplies for human consumption and sanitary measures for the prevention of disease; (4) the restoration of roads and bridges; (5) the inspection of dwelling-houses with the object of securing safety and sanitary conditions before re-occupation.

Many of these duties fall primarily on the public assistance authority, but the police authority, the highway authority, and the sanitary authority are also concerned. Close touch should be maintained between the authorities and the appropriate Government departments; in particular the M. of H. should be kept informed of the position, and their sanction under the proviso to sect. 228 (1) of the L.G.A., 1933 (*r*) should be sought as early as possible to any expenditure which is liable to disallowance by the district auditor. So far as aid is given by way of public assistance, it is desirable that the relief should be given by way of loan, so that repayment can be obtained in suitable cases (*s*). [245]

London.—The Land Drainage Act, 1930, does not apply to the administrative County of London except such portion thereof as is included in the Lee catchment area (sect. 78).

Provisions comparable to sects. 91—94 of the P.H.A., 1875 (which do not apply to London), are contained in sects. 2—4 of the P.H. (London) Act, 1891 (*t*).

As to the provisions of the London Building Act, 1930, Part XII. (*u*), concerning the regulation of building on low-lying land, see title LONDON BUILDING.

Special provisions as to flood prevention works in the County of London are contained in the Thames River (Prevention of Floods) Acts, 1879 to 1929. These Acts comprise the Metropolis Management

(*q*) 19 & 20 Geo. 5, c. xvii.

(*r*) 26 Statutes 429.

(*s*) See the Poor Law Act, 1930, ss. 49—51 as to relief by way of loan; 12 Statutes 992, 993.

(*t*) 11 Statutes 1025—1028.

(*u*) 23 Statutes 294.

(Thames River Prevention of Floods) Amendment Act, 1879 (*a*); the Metropolitan Board of Works (Various Powers) Act, 1882 (*b*), sects. 46—48; the L.C.C. (General Powers) Act, 1907 (*c*), Part VI.; and the L.C.C. (General Powers) Act, 1929 (*d*), Part IX. The powers of the L.C.C. under these Acts were extended by the L.C.C. (General Powers) Act, 1932 (*e*), sect. 14. The general effect of these provisions is to give the L.C.C. control over flood prevention works in that part of the river which is within the county. The onus of providing such works to the satisfaction of the council is placed upon the owners of premises liable to flooding. All such works must be in accordance with plans prepared or approved by the council, and the Acts also place upon the council the duty of exercising general supervision on all river banks and of inspecting any river banks, whenever it appears necessary, to ascertain whether such banks are out of repair, dangerous or insufficient for the protection of premises from floods or overflow of the river.

All banks in the county are inspected at least twice a year and the flood works are required to be maintained up to a level prescribed. In the event of a default the council are empowered to do the work themselves and recover the cost from the owner or if they think fit charge it on their own funds. Generally it is the council's policy to endeavour to recover the cost. The council has no statutory control over flood defence works on Crown land and Government properties, but the authorities concerned have adopted the council's standards, and in some cases regular inspection of the works is carried out by the council. The Port of London Authority in the exercise of their jurisdiction from Teddington to the sea include in licences granted by them a condition that embankments are to be constructed to the height for the time being prescribed by the local authority, commissioners or other body having jurisdiction in the matter of river walls.

A system of warnings against the approach of exceptionally high tides was adopted in 1928 by the L.C.C. in co-operation with the metropolitan boroughs and other authorities concerned. Under the arrangements the meteorological office gives warning to the police of conditions which indicate the possibility of an abnormal tide. Further, automatic signals are maintained at Southend and Erith, and should the water reach a prescribed level, further watch is kept at selected points along the river. Notification that the tide has reached the prescribed danger level is conveyed to the police who give a local public warning and notify the officers of the council and other interested authorities. See also sect. 14 of the Act of 1932 above-mentioned.

For a general review of the administrative position for the whole of the area affected by the river Thames, see report of the Departmental Committee on Thames Flood Prevention (*f*). [246]

(*a*) 42 & 43 Vict. c. cxcviii.

(*c*) 7 Edw. 7, c. clxxv.

(*e*) 22 & 23 Geo. 5, c. lxx.

(*b*) 45 Vict. c. lvi.

(*d*) 19 & 20 Geo. 5, c. lxxxvii.

(*f*) 1933, Cmd. 4452.

FLORA, PRESERVATION OF

The protection of wild flowers and wild plants is often furthered by bye-laws made by county and borough councils under sect. 249 of L.G.A., 1933 (*a*), for the good rule and government of the county or borough. Bye-laws made for this purpose by a county council are not operative in any borough, but may be enforced in their respective districts by urban and rural district councils, so far as the bye-laws are in force in those districts (sect. 249 (5)). The confirming authority is the Home Secretary. Bye-laws for the protection of wild plants made prior to the commencement of L.G.A., 1933, remain in operation as though made under that Act (sect. 307 (1) (i)) (*b*).

The Council for the Preservation of Rural England have recently prepared a form of bye-law, as an improved version of the bye-law previously made. This new form of bye-law is as follows :

“ No person shall, without lawful authority, uproot any ferns, primroses, or other plants growing in any road, lane, roadside waste, roadside bank or hedge, common or other place to which the public have access ” (*c*).

A person offending against such a bye-law is liable, on summary conviction, to a penalty not exceeding £5 (*d*). The onus of proving lawful authority rests on the defendant. [247]

Whilst bye-laws for the protection of flora do not normally include lists of protected plants, the Wild Plant Conservation Board (*e*), working through the Council for the Preservation of Rural England, is prepared to advise as to species in special need of protection, and prepares schedules of wild plants requiring protection in particular localities. Such schedules have no statutory effect, but are of use in educating public opinion through the Press, by instruction in schools, and in other ways. [248]

It does not appear that bye-laws for good rule and government can protect wild plants growing on private property to which the public is not granted access by express or implied permission, but *semble*, if substantial damage, over and above that incidental to an ordinary trespass, can be proved, proceedings might be taken under sect. 14 of the Criminal Justice Administration Act, 1914 (*f*).

In the case of commons and waste lands which are within sect. 193 of the Law of Property Act, 1925 (*g*) (dealing with access to them by

(*a*) 26 Statutes 439. For procedure on making such bye-laws, penalties and evidence of bye-laws, see ss. 250—252, and title BYE-LAWS.

(*b*) *I.e.* “ good rule and government ” bye-laws made under Municipal Corpn. Act, 1882, s. 23, or L.G.A., 1888, s. 16, both repealed by L.G.A., 1933.

(*c*) It is understood that a bye-law in this form has been made by several county councils and passed by the H.O.

(*d*) L.G.A., 1933, s. 251; 26 Statutes 442.

(*e*) This is a voluntary body; and inquiries may be addressed to the General Secretary, C.P.R.E., 17, Great Marlborough Street, W.1.

(*f*) 11 Statutes 378.

(*g*) 15 Statutes 371.

members of the public for air and exercise), it would appear that the limitations and conditions imposed by the Minister of Agriculture could include a prohibition against uprooting or destroying plants, or against plucking flowers (*h*); but where a common is regulated under the Commons Act, 1899, reference should also be made to the bye-laws made under any scheme for its regulation; see sect. 1 of that Act (*i*).

As to the preservation of plants and flowers growing in gardens, squares, public parks and pleasure-grounds, see titles GARDENS AND SQUARES and PUBLIC PARKS. [249]

A practical difficulty in the way of enforcing a bye-law for the protection of wild flowers and wild plants is that the uprooting of the plant must be proved in any prosecution; it may well be that wholesale plucking of flowers and trampling of plants can lead to the serious reduction or even local extermination of a particular species by preventing natural seeding and reproduction, but a local authority appears to be helpless against this form of depredation. The only remedy is the formation of an enlightened public opinion, and whilst instruction in rural schools, wireless broadcast talks and propaganda initiated by Boy Scout and Girl Guide organisations and other voluntary bodies can, and does, have good results, it is peculiarly difficult to make any impression on the townsman or town child who, when turned loose in the country, is only too apt to do damage through sheer ignorance and thoughtlessness. Prosecutions, except in flagrant cases of uprooting for commercial purposes, are apt to leave a feeling of resentment and hostility, and possibly the best protection which could be afforded to wild plants would be the creation of a better understanding, on the part of urban residents, of country problems. Something can be done by local education authorities in promoting instruction in simple rural economy and in encouraging suitably controlled competitions such as "Bird and Tree Schemes," and much can be done by enlisting the help of the press, of the broadcasting services, and of the transport undertakings. [250]

(*h*) Failure to observe any limitation or condition imposed by the Minister is punishable on summary conviction by a fine not exceeding 40s. (Law of Property Act, 1925, s. 193 (4)).

(*i*) 2 Statutes 607.

FOOD AND DRUGS

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See also titles :

ADULTERATION OF FOOD ;
ANALYST ;
ARTIFICIAL CREAM ;
BREAD ;
BUTTER, MARGARINE AND CHEESE ;
CONDENSED MILK ;
CREAM ;
DRUGS ;
EGGS ;
FOOD AND DRUGS AUTHORITIES ;
FRUIT ;
HORSEFLESH ;
ICE CREAM ;

IMPORTED FOOD ;
INSPECTORS OF FOOD AND DRUGS ;
MARKING OF AGRICULTURAL AND HOR-
TICULTURAL PRODUCE ;
MEAT ;
MILK AND DAIRIES ;
PRESERVATIVES ;
PUBLIC HEALTH ;
SAMPLING OF FOOD AND DRUGS ;
SHELL FISH, CLEANSING OF ;
UN SOUND FOOD ;
WEIGHTS AND MEASURES

Introductory.—Though purchasers of goods are, under the common law, ordinarily subject to the maxim *caveat emptor*, a purchaser of food is entitled to expect that what he buys shall be fit for consumption, and, if the food is unfit, he may seek his civil remedy for a breach of contract under the Sale of Goods Act, 1893 (*a*). The criminal law may be invoked if a vendor obtains money by a false pretence concerning what he sells (*b*), and it is a misdemeanor knowingly to mix noxious ingredients with an article of food intended for sale (*c*).

For many years, however, it has been generally recognised that purchasers of food and drugs require protection beyond that which is afforded by the general law, and this has been given them in a mass of special legislation. While the purpose of this title is to deal particularly with the law concerning the nature and composition of food and drugs, it will be useful to begin with a short reference to the various statutory provisions which apply to the sale of these articles, and to indicate how far these matters are the concern of local authorities.

(*a*) 17 Statutes 612.

(*b*) *R. v. Foster* (1877), 2 Q. B. D. 301 ; 15 Digest 996, 11, 146.

(*c*) *R. v. Dixon* (1814), 3 M. & S. 11 ; 14 Digest 34, 48.

The most common forms of adulteration of food are mentioned on pp. 120—131 of Vol. I. [251]

Acts and Regulations.—The principal Act regulating the nature and composition of food and drugs sold is the Food and Drugs (Adulteration) Act, 1928 (*d*), which repealed and re-enacted a number of earlier Acts. This Act will be the main subject of this title. Its scope embraces every article (other than water) used for food or drink by man, and any article ordinarily entering into, or used in, the composition or preparation of human food (including flavouring matters and condiments), as well as medicines for internal or external use (*e*). Proprietary medicines and patented foods are, however, exempted from sect. 2 of the Act. Decomposed food is not dealt with in the Act. Provisions relating to unsound, unwholesome and decomposed food are contained in the P.H.As. and regulations made thereunder (*f*). The marking of imported food is dealt with by the Merchandise Marks Act, 1926, and numerous orders made thereunder (*g*).

Short weight or measure in the sale of food is an offence under the Sale of Food (Weights and Measures) Act, 1926 (*h*).

The application of grade designation marks (including the National Mark) to agricultural produce is controlled by the Agricultural Produce (Grading and Marking) Acts, 1928 (*i*), and 1931 (*k*), and regulations under those Acts.

Preservatives and colouring matters in food are dealt with by regulations (*l*) which are applied by the Food and Drugs (Adulteration) Act, 1928 (*m*). [252]

Particular Articles of Food.—Bread and flour are dealt with by two ancient statutes (*n*), now virtually obsolete, supplemented by the Bread Acts Amendment Act, 1922 (*o*). Coffee and tea are subject to the provisions of various Revenue Acts, administered by the Commissioners of Customs and Excise (*p*). Cream and artificial cream are specially dealt with by the Artificial Cream Act, 1929 (*q*). Milk is specially regulated by the Milk and Dairies (Consolidation) Act, 1915 (*r*), the Milk and Dairies Order, 1926 (*s*), the Milk and Dairies (Amendment)

(*d*) 8 Statutes 884—908.

(*e*) The definitions of "food" and "drug" are to be found in s. 34; 8 Statutes 905.

(*f*) Especially ss. 116—119, P.H.A., 1875; 13 Statutes 672, 673. See also title UNSOUND FOOD.

(*g*) 19 Statutes 898. See title IMPORTED FOOD.

(*h*) 20 Statutes 419. See titles BREAD; MEAT; MILK AND DAIRIES; WEIGHTS AND MEASURES.

(*i*) 1 Statutes 165.

(*k*) 24 Statutes 8. See titles EGGS; MARKING OF AGRICULTURAL AND HORTICULTURAL PRODUCE.

(*l*) Public Health (Preservatives, etc., in Food) Regulations, S.R. & O., 1925, No. 775; S.R. & O., 1926, No. 1557; and S.R. & O., 1927, No. 577, made under the P.H.As., especially under the P.H. (Regulations as to Food) Act, 1907; 8 Statutes 862. See also title PRESERVATIVES.

(*m*) Ss. 1, 2; 8 Statutes 884, 885.

(*n*) 3 Geo. 4, c. cvi. (applying to London) and Bread Act, 1836; 8 Statutes 851.

(*o*) 8 Statutes 878. See title BREAD.

(*p*) *Ibid.*, 845—848. See also s. 30 of Sale of Food and Drugs Act, 1875 (8 Statutes 860), dealing with imported tea.

(*q*) 8 Statutes 908. See titles ARTIFICIAL CREAM and CREAM. Many of the provisions of the Milk and Dairies (Consolidation) Act, 1915 (8 Statutes 864), apply to cream as well as to milk.

(*r*) 8 Statutes 864.

(*s*) S.R. & O., 1926, No. 821.

Act, 1922 (*t*), the Milk (Special Designations) Orders, 1923 and 1934 (*u*), and the Milk Act, 1934 (*a*); as well as by regulations (*b*) made under the Food and Drugs (Adulteration) Act, 1928. Further regulations control imported milk (*c*). Condensed and dried milk are dealt with by regulations (*d*) under the P.H.As., as also are meat (*e*) and shellfish (*f*).

Wines, spirits, beer and other intoxicating liquors are subject to various provisions of Revenue and Finance Acts, under which their composition is to some extent regulated, but local authorities are not concerned with the enforcement of these Acts. The use of the descriptions "Port" and "Madeira" in their application to wine is controlled by the Anglo-Portuguese Commercial Treaty Acts, 1914 and 1916 (*g*).
[253]

Duties and Powers of Local Authorities.—The duties of a food and drugs authority (*h*) under the Food and Drugs (Adulteration) Act, 1928, the Artificial Cream Act, 1929 (*i*), and other statutes and regulations are summarised in the title FOOD AND DRUGS AUTHORITIES, *post*, p. 128.

The administration of the P.H.As., the Public Health (Meat) Regulations, and other provisions relating to unsound food is a matter for each borough or district council as the sanitary authority, or the port sanitary authority.

County councils and county borough councils have a duty to enforce the penal provisions of the Agricultural Produce (Grading and Marking) Acts, 1928 and 1931 (*k*).

The local authorities under the Weights and Measures Acts, 1878 to 1926 (*l*), are, except in London, for the most part the same as the food and drugs authorities, though in a few boroughs the council is not the authority for both purposes.

Local authorities have no specific duties under the statutes dealing specially with the composition of bread, coffee and tea, beer and wines. The enforcement of the Acts and orders relating to milk is shared by different classes of local authority (*m*).

Apart, however, from any duties or powers specifically allotted to local authorities, it is to be remembered that an officer of a local authority, which is not a food and drugs authority, may institute proceedings under the Food and Drugs (Adulteration) Act, 1928 (*n*). The general power given to a local authority to prosecute or defend legal proceedings when they deem it expedient for the promotion or protection of the interests of the inhabitants of their area is of somewhat uncertain extent (*o*). [254]

(*t*) 8 Statutes 879.

(*u*) S.R. & O., 1923, No. 601, 1934, No. 1317.

(*a*) 27 Statutes 7.

(*b*) S.R. & O., 1901, No. 657, and 1912, No. 687. See title MILK AND DAIRIES.

(*c*) S.R. & O., 1926, No. 820. See title MILK AND DAIRIES.

(*d*) S.R. & O., 1923, No. 509, and 1927, No. 1092; S.R. & O., 1923, No. 1323, and 1927, No. 1093. See title CONDENSED MILK.

(*e*) S.R. & O., 1924, No. 1432. See title MEAT.

(*f*) S.R. & O., 1934, No. 1342. See title UNSOUND FOOD. As to cleansing of shellfish, see title SHELLFISH, CLEANSING OF.

(*g*) 19 Statutes 872, 879.

(*h*) Defined in s. 13; 8 Statutes 893. See title FOOD AND DRUGS AUTHORITIES.

(*i*) 8 Statutes 908. See title ARTIFICIAL CREAM.

(*k*) 1 Statutes 165; 24 Statutes 8

(*l*) 20 Statutes 369—429.

(*m*) See title MILK AND DAIRIES.

(*n*) See title FOOD AND DRUGS AUTHORITIES, at *post*, p. 129.

(*o*) See L.G.A., 1933, s. 276 (26 Statutes 452), and *Tynemouth Corpn. v. A.-G.*, [1899] A. C. 293; 33 Digest 83, 539.

Administrative Machinery.—For the purpose of discharging their duties under the Act of 1928, every food and drugs authority must appoint a public analyst (*p*) and must direct their officers to procure samples for analysis (*q*). The officers who may act as sampling officers are medical officers of health, sanitary inspectors, inspectors of weights and measures, market inspectors, and police constables (*r*). Under the other Acts and orders to be administered by food and drugs authorities there is no restriction as to the officers to be appointed. The powers vested in local authorities are not exclusive. Any individual purchaser of food may himself institute proceedings for offences against Part I. of the Act of 1928. [255]

Responsibility of Vendors.—Generally, any person or company on whose behalf food is sold is held responsible and is liable to be prosecuted if the sale is contrary to the provisions of any of the statutes to which reference has been made. Unless in the section creating the offence there are words with a contrary significance, the absence of *mens rea* is no defence (*s*). Indeed, under sect. 2 of the Act of 1928 a master is responsible even for the unauthorised acts of his servant (*t*). It is, however, open to the prosecution to summon a shop assistant or other employee as the actual seller of the unsatisfactory article of food (*u*); and the provisions of the Summary Jurisdiction Acts as to aiding and abetting, counselling or procuring the commission of an offence should also be remembered.

Limited companies may be prosecuted in the same manner as a person (*a*) even when the question of *mens rea* is material (*b*).

The Act of 1928 specially provides that civil rights and liabilities for breach of contract are not affected and that the amount of any fine and costs imposed on a vendor may in certain circumstances be recovered by him as special damages from a person who sold the article to him (*c*). [256]

Articles Injurious to Health.—It is an offence to mix, or order or permit any person to mix, any article of food with an ingredient so as to render the article injurious to health, with the intent that the article may be sold in that state, or to sell any article so mixed (*d*). A similar provision applies to drugs mixed with any ingredient so that their quality or potency is injuriously affected. But a vendor is not to be convicted if he proves that he did not know and could not with reasonable diligence have ascertained that the article of food or drug was mixed as aforesaid. It is not necessary to prove that the article sold is injurious to the health of all consumers. An offence may be committed if the mixed article of food is injurious to children or invalids,

(*p*) S. 15; 8 Statutes 894. See title ANALYST.

(*q*) S. 14; 8 Statutes 893. See title SAMPLING OF FOOD AND DRUGS.

(*r*) S. 16; 8 Statutes 894. See title INSPECTORS OF FOOD AND DRUGS.

(*s*) *Betts v. Armstead* (1888), 20 Q. B. D. 771; 25 Digest 80, 95.

(*t*) *Brown v. Foot* (1892), 61 L. J. (M. C.) 110; 25 Digest 82, 104; *Parker v. Alder*, [1899] 1 Q. B. 20; 25 Digest 81, 97; *Houghton v. Mundy* (1910), 103 L. T. 60; 25 Digest 82, 106.

(*u*) *Hoichin v. Hindmarsh*, [1891] 2 Q. B. 181; 25 Digest 98, 222.

(*a*) *Pearks, Gunston and Tee, Ltd. v. Ward*, [1902] 2 K. B. 1; 25 Digest 81, 101.

(*b*) *Chuter v. Freeth and Pocock, Ltd.*, [1911] 2 K. B. 832; 25 Digest 100, 237;

R. v. Ascanio Puck, Ltd. (1912), 76 J. P. 487; 25 Digest 114, 377.

(*c*) S. 33; 8 Statutes 904.

(*d*) S. 1; 8 Statutes 884. See also *Hull v. Horsnell* (1904), 92 L. T. 81; 25 Digest 79, 84.

though not to healthy adults (*e*). It would appear that a disclosure under sect. 4 of the admixture by label is not a good defence to proceedings under sect. 1 of the Act of 1928 (*f*); nor is the "warranty" defence (*g*). [257]

Prejudice of the Purchaser.—Most Food and Drugs Act prosecutions are instituted under sect. 2 of the Act of 1928, which provides that no person shall sell to the prejudice of the purchaser any article of food or drug which is not of the nature or substance or quality demanded (*h*) subject to certain provisos which will be considered later. The meaning of the phrase "prejudice of the purchaser" has been considered many times by the High Court, which has held that a purchaser is not prejudiced if adequate notice is given to him at the time of the sale that the article is not of the nature, substance or quality demanded (*i*). Further, to establish prejudice to the purchaser it is not necessary to show that the actual purchaser has in fact sustained damage or prejudice. The notice that an article is not what is demanded may be given by word of mouth or by label or placard. It does not seem to be necessary to disclose what a mixture contains, but the notice given must be clear and unambiguous (*k*) and it must be given before the completion of the sale. It is no defence to allege that a purchaser, having bought only for the purpose of having the article analysed, is for that reason not prejudiced (*l*). [258]

The Divisional Court has often been asked to decide whether notices relating to the dilution of spirits are a sufficient protection to a vendor. A group of old decisions came specially under review in two important cases in 1925. In the first of these (*m*) the court decided that the exhibition of a notice which the purchaser did not see and to which his attention was not drawn did not suffice to rebut the presumption that the sale was to the prejudice of the purchaser. In the other case (*n*) the purchaser of rum at a public-house saw and read a notice in these terms: "All spirits sold at this establishment are of the same superior quality as heretofore, but to meet the requirements of the Food and Drugs Acts they are now sold as diluted spirits. No alcoholic strength guaranteed." The rum was found to be 41·5 degrees below proof, and it was held that there was evidence to justify the finding that the sale was to the prejudice of the purchaser. Lord HEWART, L.C.J., said: "There are two questions: (1) What is the substance of the information which must be given to the purchaser? (2) Were the steps taken sufficient in all the circumstances to convey this information to an average purchaser? If the particular purchaser does not see, and is not made aware of, the notice, obviously the question of its sufficiency does not arise. The first of the foregoing questions is a question of

(*e*) *Cullen v. McNair* (1908), 99 L. T. 358; 25 Digest 79, 82.

(*f*) See the wording of s. 4 and *Williams v. Friend*, [1912] 2 K. B. 471; 25 Digest 87, 145.

(*g*) *Elliot v. Pilcher*, [1901] 2 K. B. 817; 25 Digest 96, 203.

(*h*) 8 Statutes 885. Absence of guilty knowledge is no defence to a prosecution under sect. 2, see *Betts v. Armstead* (1888), 20 Q. B. D. 771; 25 Digest 80, 95.

(*i*) *Williams v. Friend*, [1912] 2 K. B. 471; 25 Digest 87, 145; *Sandys v. Small* (1878), 3 Q. B. D. 449; 25 Digest 83, 113; *Higgins v. Hall* (1886), 51 J. P. 293; 25 Digest 86, 133.

(*k*) *Star Tea Co., Ltd. v. Neale* (1909), 73 J. P. 511; 25 Digest 83, 116.

(*l*) S. 2 (3); 8 Statutes 886.

(*m*) *Preston v. Grant*, [1925] 1 K. B. 177; 25 Digest 86, 135.

(*n*) *Rodbourn v. Hudson*, [1925] 1 K. B. 225; 25 Digest 87, 140. See also the Scottish case *Brander v. Kinnear*, [1923] S. C. (J.) 42; 25 Digest 86, 139 i.

law, the second is a question of fact. As to (1) the purchaser must be told in substance that the thing which he is getting is not the thing he asked for. As to (2) the question is whether the notice is in such terms as would bring the required information to the mind of an average customer. The actual sufficiency of the notice is a question for the justices." He added that the notice in this case was in his opinion of grave and calculated ambiguity. [259]

Lawful Admixtures.—No offence is committed under sect. 2 of the Act if an ingredient which is not injurious to health is added to an article of food or drug because it is required for its production or preparation as an article of commerce in a fit state for carriage or consumption and the addition has not been made fraudulently to conceal inferior quality or to increase bulk, weight or measure (*o*). Thus, a reasonable quantity of added starch may be present in shredded suet. Similarly, there may be unavoidable admixture of sand with certain spices in the process of collection or preparation, but reasonable care to exclude an undue proportion of the admixed material must be exercised (*p*). [260]

Disclosure by Label.—Sect. 4 of the Act specially provides that a legible label, supplied on or with an article of food or drug, to the effect that it is mixed shall be a good defence for any person summoned in respect of the sale of the article of food or drug, mixed with an ingredient or material not injurious to health and not intended fraudulently to increase bulk, weight or measure or to conceal inferior quality (*q*). The notice of admixture must not be obscured by other matter on the label, but it is still valid if the labelled packet be handed in a plain outer wrapper to the purchaser (*r*). The question whether an admixture has been made with a fraudulent intention is one of fact for the justices, but has been considered, particularly with reference to mixtures of coffee and chicory (*s*) and to cocoa mixed with starch and sugar, in various cases which have reached the High Court (*t*). The distinction between the special defence made available by sect. 4 in the case of declaratory labels and other methods of notifying purchasers that the article sold is not the article demanded, should be kept in mind (*u*). [261]

Nature, Substance and Quality.—Before it can be held that an article of food or drug is not of the nature, substance or quality demanded, it is evidently necessary to know what standards are applicable. Statutory standards or definitions have been prescribed for some articles of food, some of these being explicit and others being presumptive (*a*). In the absence of any statutory definition, magistrates must arrive at a

(*o*) Proviso (a) to s. 2 (2); 8 Statutes 885.

(*p*) *Shortt v. Robinson* (1899), 68 L. J. (Q. B.) 352; 25 Digest 88, 148.

(*q*) 8 Statutes 887.

(*r*) *Jones v. Jones* (1894), 58 J. P. 653; 25 Digest 84, 127; and *Clifford v. Battley*, [1915] 1 K. B. 531; 25 Digest 85, 129.

(*s*) *Liddiard v. Reece* (1878), 44 J. P. 233; 25 Digest 83, 114; *Horder v. Meddings* (1880), 44 J. P. 234; 25 Digest 83, 115; *Otter v. Edgley* (1893), 57 J. P. 457; 25 Digest 86, 134; and *Star Tea Co., Ltd. v. Neale* (1909), 73 J. P. 511; 25 Digest 83, 116.

(*t*) *Jones v. Jones*, *supra*.

(*u*) *Sandys v. Small* (1878), 3 Q. B. D. 449; 25 Digest 83, 113.

(*a*) For definitions and standards in force, see the titles ADULTERATION; ARTIFICIAL CREAM; BREAD; BUTTER, MARGARINE AND CHEESE; CONDENSED MILK; CREAM; DRUGS; MILK AND DAIRIES; PRESERVATIVES.

standard on the evidence before them and ought to act on the certificate of a public analyst unless there be evidence to contradict it (b). "Quality" means commercial quality, not description or kind (c). [262]

The Article Demanded.—This phrase means the article known in commerce by the name used by the purchaser (d). Where it was found that the public commonly know sago as tapioca, it was held that no offence was committed by selling tapioca as sago (e). It is not an offence to sell a genuine article of low quality, for example cream containing less than the usual percentage of milk-fat (f). In a case in which marmalade contained glucose, there was evidence that much marmalade was normally made with some glucose, and a conviction was quashed (g). The question whether the article sold is the article demanded is one of fact for the justices (h), who are entitled to use their own knowledge as to what is known in commerce under any particular name (i). The accidental introduction of a small quantity of dirt or other foreign matter does not necessarily prevent an article from being of the nature demanded (k). But it is an offence to sell an article altogether different from that demanded (l). For example, it has been held that a purchaser of rum-and-butter toffee is entitled to receive an article containing no fat other than butter-fat (m), and there have been many successful prosecutions under sect. 2 for selling haddock or pollack as hake and for selling witches or megrims as lemon-soles. With regard to fish, however, difficulty sometimes arises from the fact that local and customary names for fish are differently used in different parts of the country. In an attempt to clarify the situation the M. of A. & F. issued, early in 1935, a list (n) of approved names for use in the retail sale of fish. This list was prepared by the Ministry at the request of, and in collaboration with, representative trade associations. Although the use of the names in the list is not legally compulsory yet it is recommended by the Ministry and the trade associations, and will probably be valuable to Food and Drugs Authorities in preventing the passing off of a less expensive kind of fish for that asked for by a customer. [263]

Other Offences Relating to Ingredients.—By sect. 3 of the Act (o) it is unlawful to sell any compound article of food or compounded drug which is not composed of ingredients in accordance with the demand of the purchaser, but this section seems of little practical value, as any such

(b) *Robinson v. Newman* (1917), 86 L. J. (K. B.) 814; 25 Digest 78, 78; *Elder v. Dryden* (1908), 99 L. T. 20; 25 Digest 78, 77; *Roberts v. Leeming* (1905), 69 J. P. 417; 25 Digest 88, 150. See also *Bowker v. Woodroffe*, [1928] 1 K. B. 217; Digest (Supp.); and *Preston v. Jackson* (1928), 73 Sol. Jo. 712; Digest (Supp.).

(c) *Anness v. Grivell*, [1915] 3 K. B. 685; 25 Digest 89, 154.

(d) *Pashler v. Stevenitt* (1876), 35 L. T. 862; 25 Digest 90, 162.

(e) *Sandys v. Rhodes* (1903), 67 J. P. 352; 25 Digest 89, 152.

(f) *Hoyle v. Hitchman* (1879), 4 Q. B. D. 233; 25 Digest 83, 110.

(g) *Smith v. Wisden* (1901), 85 L. T. 760; 25 Digest 91, 166.

(h) *Webb v. Knight* (1877), 2 Q. B. D. 530; 25 Digest 88, 146.

(i) *R. v. Field* (1895), 64 L. J. (M. C.) 158; 25 Digest 88, 147; and *Shortt v. Robinson* (1899), 68 L. J. (Q. B.) 352; 25 Digest 88, 148.

(k) *Goulder v. Rook, Bent v. Ormerod*, [1901] 2 K. B. 290; 25 Digest 80, 96; *Kenny v. Cox* (1920), 89 L. J. (K. B.) 1258; 25 Digest 130, 509.

(l) *Knight v. Bowers* (1885), 14 Q. B. D. 845; 25 Digest 89, 151.

(m) *Riley Bros. (Halifax), Ltd. v. Hallimond* (1927), 44 T. L. R. 238; Digest (Supp.).

(n) Fisheries Notice, No. 23.

(o) 8 Statutes 887.

offence can conveniently be dealt with under sect. 2 of the Act (*p*). By sect. 5 (*g*) it is unlawful to abstract from an article of food any part of it so as to affect injuriously its nature, substance or quality, with the intent that the altered article shall be sold without disclosure, or to sell without disclosure any article so altered. This provision seems intended especially to deal with the sale of milk deprived of a part of its cream, and it has been held that an offence is committed if milk is sold from which part of the fat has been removed owing to the failure of the vendor to stir a churn in which the cream has collected at the top, so that the milk sold from the bottom contained less than its due proportion of fat (*r*). In the absence of disclosure, it is not a good defence to prove that at the time of the sale the vendor had no knowledge of the alteration (*s*). [264]

Defence of Warranty.—A defendant in a prosecution under Part I. of the Act of 1928 is entitled to be discharged if he proves that he had purchased the article as the same in nature, substance and quality as that demanded by the person to whom he sold it, and with a written warranty to that effect, and that he sold it in the same state as when he purchased it (*t*). Except when the article sold is margarine, margarine-cheese or milk-blended butter, a mere invoice is not a valid warranty (*a*). If a warranty is to be relied on, the defendant must in writing so inform the prosecutor and must send him a copy of the warranty or of the material part thereof (*b*) within seven days of the service of the summons. Posting the notice and copy on the seventh day is sufficient (*c*). He must specify the name and address of the warrantor and must also notify the warrantor (not necessarily within seven days) (*d*) that the warranty will be set up. If the warrantor resides outside the United Kingdom, the defendant must further under sect. 29 (2) (*b*) prove that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the warranty. In prosecutions with respect to milk, the defendant may only plead warranty if within sixty hours after the sample was procured from him, he serves on the local authority a formal notice with prescribed particulars (*e*), requesting that immediate steps be taken to procure a further sample of milk in course of transit or delivery from the warrantor (*f*). A warrantor whose warranty is set up as a defence is entitled to appear at the hearing and give evidence (*g*).

(*p*) *Beardsley v. Walton*, [1900] 2 Q. B. 1; 25 Digest 91, 170; and *Dickins v. Randerson*, [1901] 1 K. B. 437; 25 Digest 90, 159.

(*q*) 8 Statutes 887.

(*r*) *Bridges v. Griffin*, [1925] 2 K. B. 233; 25 Digest 130, 503.

(*s*) *Pain v. Boughtwood* (1890), 24 Q. B. D. 353; 25 Digest 92, 172; *Dyke v. Gower*, [1892] 1 Q. B. 220; 25 Digest 92, 174; and *Morris v. Corbett* (1892), 56 J. P. 649; 25 Digest 92, 173.

(*t*) S. 29; 8 Statutes 902.

(*a*) See the words "or invoice" in s. 29 (1) (*a*). These do not occur in s. 29 (1) (*b*).

(*b*) *Irving v. Callow Park Dairy Co., Ltd.* (1902), 87 L. T. 70; 25 Digest 94, 193; *Farthing v. Parkinson* (1904), 90 L. T. 733; 25 Digest 100, 234.

(*c*) *Retail Dairy Co., Ltd. v. Clarke*, [1912] 2 K. B. 388; 25 Digest 100, 235.

(*d*) *Marcus v. Crook*, [1914] 3 K. B. 173; 25 Digest 100, 236.

(*e*) For the particulars to be furnished, see Sched. II.; 8 Statutes 906.

(*f*) Authorised officers have powers under s. 16 (2) (8 Statutes 894) to take samples in course of delivery at the place of delivery; and a further power to take samples of milk in course of transit is given by s. 8 of Milk and Dairies (Consolidation) Act, 1915 (8 Statutes 868). For the powers generally of sampling officers and for the offences of obstructing them or refusing to supply them, see the titles INSPECTORS OF FOOD AND DRUGS and SAMPLING OF FOOD AND DRUGS.

(*g*) S. 29 (3); 8 Statutes 902.

A warranty may be relied on by a servant of the person to whom the warranty was given, if he is prosecuted for selling the article in question, subject to proof that the servant had no reason to believe that the article sold was not of the nature, etc., demanded from him (*h*). A large number of cases on the validity of warranties have been before the High Court, and some of the decisions appear inconsistent and difficult to reconcile. But some principles may be obtained from them. A warranty is not a good defence if given after the contract of sale has been completed, unless the contract contained a stipulation that the warranty would be given (*i*). Where there was merely a contract for the sale of "new milk," it was held that neither the contract nor labels on the churns, guaranteeing the milk to be pure, constituted a valid warranty (*k*). There must be some connection between any warranty which may have been given and the particular consignment of food which is in question, but what is "connection" is doubtful, having regard to all the decisions on the point (*l*). Although, as has been stated, a mere invoice is ordinarily insufficient to constitute a valid warranty (*m*), it may be such if the circumstances show that it may be regarded as the actual contract of sale (*n*). Moreover, the invoice, though not containing any warranty, may ear-mark a particular parcel so as to identify it with a contract in which a written warranty is included (*o*).

If a vendor alters an article bought under a warranty, for example by adding a little preservative, he cannot rely on the warranty (*p*). Proof that the article was sold in the same condition as when purchased must be complete. If churns of milk have been left unattended at a railway station before removal, it is not sufficient to prove that the milk was genuine when it first arrived at the station (*q*). A person relying on a warranty must have received it from his immediate vendor (*r*). Successive warranties are not provided for (*s*). Warranties are not necessarily invalid because they contain words of limitation, such as "without accepting any responsibility after delivery" (*t*).

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(*h*) S. 29 (4) ; 8 Statutes 903.

(*i*) *Jeynes v. Hindle*, [1921] 2 K. B. 581 ; 25 Digest 94, 191.

(*k*) *Dewey v. Faulkner*, [1923] 1 K. B. 315 ; 25 Digest 97, 217.

(*l*) See *Robertson v. Harris*, [1900] 2 Q. B. 117 ; 25 Digest 96, 207 ; *Elliot v. Pilcher*, [1901] 2 K. B. 817 ; 25 Digest 96, 208 ; *Irving v. Callow Park Dairy Co., Ltd.* (1902), 87 L. T. 70 ; 25 Digest 94, 193 ; *Watts v. Stevens*, [1906] 2 K. B. 323 ; 25 Digest 96, 211 ; *Evans v. Weatheritt*, [1907] 2 K. B. 80 ; 25 Digest 96, 209 ; *Draper v. Newnham* (1910), 102 L. T. 280 ; 25 Digest 96, 210 ; *Rees v. Davis* (1908), 72 J. P. 375 ; 25 Digest 97, 212 ; *Lewis v. Weatheritt* (1909), 100 L. T. 367 ; 25 Digest 97, 213.

(*m*) *Rook v. Hopley* (1878), 3 Ex. D. 209 ; 25 Digest 95, 194 ; *Elder v. Smithson* (1893), 57 J. P. 809 ; 25 Digest 95, 199 ; *Jiorns v. Van Tromp* (1895), 64 L. J. (M. C.) 171 ; 25 Digest 94, 190 ; but cf. *contra Lindsay v. Rook* (1894), 63 L. J. (M. C.) 231 ; 25 Digest 95, 200 ; which was adversely commented on in *Jeynes v. Hindle*, *supra*.

(*n*) *Hawkins v. Williams* (1895), 59 J. P. 533 ; 25 Digest 95, 196.

(*o*) *Laidlow v. Wilson*, [1894] 1 Q. B. 74 ; 25 Digest 93, 189, approved in *Watts v. Stevens*, *supra*.

(*p*) See s. 29 (1) (*b*) and *Hennen v. Long* (1904), 90 L. T. 387 ; 25 Digest 98, 224.

(*q*) *Sanders v. Sadler* (1906), 95 L. T. 872 ; 25 Digest 99, 225 ; *Pugh v. Williams* (1917), 86 L. J. (K. B.) 1407 ; 25 Digest 99, 226.

(*r*) *Hargreaves v. Spackman* (1907), 98 L. T. 41 ; 25 Digest 94, 192.

(*s*) *Manners v. Tyler*, [1902] 1 K. B. 901 ; 25 Digest 100, 239.

(*t*) *Wilson v. Playle* (1903), 88 L. T. 554 ; 25 Digest 97, 214, followed in *Plow-right v. Burrell*, [1913] 2 K. B. 362 ; 25 Digest 97, 215. See also *Jackling v. Carter* (1912), 107 L. T. 24 ; 25 Digest 97, 216.

False Warranties and Descriptions.—It is unlawful to give to a purchaser a false warranty in writing in respect of an article of food or drug sold, unless the warrantor proves that when he gave the warranty he had reason to believe that the statements or descriptions therein were true (*u*); or to apply wilfully to an article of food or drug, in any proceedings under the Act of 1928, a certificate or warranty given in relation to any other article of food or drug; or to give wilfully with any article of food or drug sold, a label which falsely describes the thing sold (*a*). When a defendant, prosecuted under the Act of 1928, has successfully set up the defence of warranty, proceedings against his warrantor for giving a false warranty may be taken either before a court having jurisdiction where the article was purchased for analysis or before a court having jurisdiction where the warranty was given (*b*). [266]

Informations against Offenders.—Where an article has been analysed, an information laid under the Act of 1928 respecting it should be in the name of the person, usually a sampling officer (*c*) who causes the analysis to be made (*d*), though that officer may not have been personally concerned in the purchase of the sample (*e*). The information must be laid, if a sample has been purchased for test purposes, before the expiration of twenty-eight days from the time of the purchase (*f*). The day on which the purchase is made is to be excluded from the reckoning (*g*). The provision as to twenty-eight days is imperative and is not waived by the appearance of the defendant under protest (*h*). The time limit applies to persons charged as aiders and abettors as well as to those charged as principals (*i*), but does not apply to proceedings for giving a false warranty (*k*) or to proceedings instituted in respect of offences discovered without a sample having been purchased for test purposes—*e.g.* to proceedings arising from the procuring of a sample, without purchase, in course of delivery. [267]

Summonses.—By sect. 27 (1) of the Act (*l*), offences are to be prosecuted in accordance with the Summary Jurisdiction Acts, but in

(*u*) S. 30 (2); 8 Statutes 903. A farmer who handed to a railway company in Derbyshire warranted milk which he believed to be genuine, and had no reason to suspect that the milk would be tampered with between Derbyshire and London, where delivery was to be made, was held to be entitled to the benefit of this provision (*Oatley v. Lemon* (1905), 92 L. T. 200; 25 Digest 101, 245).

(*a*) S. 30 (1); 8 Statutes 903.

(*b*) S. 30 (3); 8 Statutes 903. See also *Manners v. Tyler*, [1902] 1 K. B. 901; 25 Digest 100, 239; and *Grimble & Co. v. Preston*, [1914] 1 K. B. 270; 25 Digest 106, 310.

(*c*) See title INSPECTORS OF FOOD AND DRUGS.

(*d*) S. 27 (2); 8 Statutes 900.

(*e*) *Tyler v. Dairy Supply Co., Ltd.* (1908), 98 L. T. 867; 25 Digest 71, 12; *Horder v. Scott* (1880), 5 Q. B. D. 552; 25 Digest 76, 53; *Stace v. Smith* (1880), 45 J. P. 141; 25 Digest 71, 9; *Garforth v. Esam* (1892), 56 J. P. 521; 25 Digest 71, 10.

(*f*) S. 27 (1); 8 Statutes 900. See *Beardsley v. Giddings*, [1904] 1 K. B. 847; 25 Digest 102, 248; and *Brooks v. Bagshaw*, [1904] 2 K. B. 798; 25 Digest 102, 249.

(*g*) *Frew v. Morris* (1897), 34 Sc. L. R. 527; 25 Digest 106, 291*ii*. See also *Radcliffe v. Bartholomew*, [1892] 1 Q. B. 161; 42 Digest 946, 188.

(*h*) *Dixon v. Wells* (1890), 25 Q. B. D. 249; 25 Digest 105, 283.

(*i*) *Gould v. Houghton*, [1921] 1 K. B. 509; 25 Digest 104, 282.

(*k*) *Cook v. White*, [1896] 1 Q. B. 284; 25 Digest 101, 241; *Whitaker v. Pomfret Bros.*, [1902] 1 K. B. 661; 25 Digest 101, 242.

(*l*) 8 Statutes 900.

some respects a special procedure is prescribed. Thus, a summons under the Act of 1928, in addition to stating particulars of the offence alleged, must state the name of the prosecutor and must not be returnable in less than fourteen days from the day on which it is served (*m*). The time limit of fourteen days means fourteen clear days. A summons served on November 26 and made returnable on December 10 was held to be invalid (*n*). Omission to serve with the summons a copy of the certificate of analysis (*o*) is fatal to a prosecution if objection be taken, though the informality may be waived by the defence (*p*). It is to be noted that when a sample has been purchased for test purposes, an analysis is essential even when the vendor admits that he has sold an article not of the nature demanded (*q*). In the ordinary course, summonses are heard by a petty sessional court having jurisdiction where the offending sample was taken, or where the article of food or drug was actually delivered to the purchaser (*r*). But a prosecution for giving a false warranty may be instituted before the court of the place where the food or drug was purchased for analysis or the court having jurisdiction where the warranty was given (*s*). [268]

Production of Sample in Court.—In any proceedings under the Act of 1928, the retained part of the sample must be produced at the hearing (*t*). Failure to comply with this requirement may be fatal to a conviction (*u*), but it is not essential that the sample shall be in a fit condition for analysis, if the justices find that it had originally been properly sealed or fastened by the sampling officer (*a*). [269]

Evidence of Analyst's Certificate.—The certificate of a public analyst in relation to articles of food and drugs submitted to him under the Act of 1928 must be in the prescribed form or in a form to the like effect (*b*), and must be given to the person by whom the sample was sent. The analyst must state the facts on which he bases his opinion sufficiently to enable magistrates to come to a conclusion themselves (*c*). It is insufficient merely to state that a sample contains *e.g.* "arsenic" or "a serious quantity of arsenic" (*d*), but it is not essential to give full details of all the constituents of a sample (*e*), so long as the standard on which a conclusion is based is stated or implied. Surplusage in a certificate does not invalidate it (*f*). The weight of the sample need not

(*m*) S. 27 (5); 8 Statutes 900. See also *McQueen v. Jackson*, [1903] 2 K. B. 163; 25 Digest 106, 296.

(*n*) *Whitaker v. Pomfret Bros.*, [1902] 1 K. B. 661; 25 Digest 101, 242.

(*o*) S. 28 (1); 8 Statutes 901.

(*p*) *Grimble & Co. v. Preston*, [1914] 1 K. B. 270; 25 Digest 106, 310; *Haynes v. Davis*, [1915] 1 K. B. 332; 25 Digest 103, 266.

(*q*) *Smart v. Watts*, [1895] 1 Q. B. 219; 25 Digest 103, 256.

(*r*) S. 27 (2); 8 Statutes 900.

(*s*) S. 30 (3); 8 Statutes 903. See also *Grimble & Co. v. Preston*, *supra*.

(*t*) S. 28 (4); 8 Statutes 901.

(*u*) *Hutchison v. Stevenson* (1902), 39 Sc. L. R. 789; 25 Digest 103, g.

(*a*) *Suckling v. Parker*, [1906] 1 K. B. 527; 25 Digest 103, 257; *Winterbottom v. Allwood*, [1915] 2 K. B. 608; 25 Digest 75, 50. For the method of dealing with samples, see title SAMPLING OF FOOD AND DRUGS.

(*b*) S. 17 (3); 8 Statutes 895. The statutory form is given in Sched. I; 8 Statutes 906.

(*c*) *Fortune v. Hanson*, [1896] 1 Q. B. 202; 25 Digest 77, 62.

(*d*) *Lee v. Bent, Barlow v. Noblett*, [1901] 2 K. B. 290; 25 Digest 80, 96.

(*e*) *Jenkins v. Naden* (1919), 88 L. J. (K. B.) 1137; 25 Digest 77, 68; *Bayley v. Cook* (1905), 92 L. T. 170; 25 Digest 77, 67.

(*f*) *Gordon v. Love*, [1911] S. C. (J.) 75; 25 Digest 127, o; and *Bakewell v. Davis*, [1894] 1 Q. B. 296; 25 Digest 77, 60.

be stated unless it is material to the accuracy of the analysis (g). The production of a public analyst's certificate in the prescribed form is sufficient evidence of the facts stated therein unless there is evidence to the contrary (h) or unless the other party requires that the analyst shall be called as a witness (i). It is doubtful whether an analyst may by word of mouth supplement a deficiency in his certificate (k).

In a certificate relating to milk, butter, or any article liable to decomposition, the analyst is required to report specially whether any change had taken place in the constitution of the article, which would interfere with the analysis (l). In practice, appropriate words to that effect are frequently printed at the foot of forms of certificate.

If a defendant proposes to produce a public analyst's certificate at the hearing, he must send a copy thereof to the prosecutor at least three clear days before the return day (m). A court of summary jurisdiction may, at its discretion, and must, at the request of either party, send for analysis to the Government Chemist any article of food or drug (n); and it is for that purpose that a third part of the sample is retained by the sampling officer and produced at the hearing. The certificate of the Government Chemist, which need not be in a prescribed form (o), is not necessarily conclusive, but carries great weight with the court (p). [270]

Penalties.—For a contravention of sect. 1 of the Act of 1928, the fine for a first offence may not exceed £50, and for a second offence in relation to food or drugs, as the case may be, the accused is liable, on conviction on indictment, to imprisonment for a term not exceeding six months (q). For a contravention of sect. 2, and for most other offences under the Act, the maximum fine is £20 for a first offence, or £50 for a second offence (r). For a third or subsequent offence, the fine may be as much as £100, and if the court be of opinion that the offence was committed by the personal act, default or culpable negligence of the accused, imprisonment for not more than three months may be ordered (r). [271]

London.—Under sect. 13 of the Act (s), the food and drugs authorities in London are the Common Council of the City and the metropolitan borough councils, and their expenses in administering the Act are payable out of the general rate (t).

The power of dealing with unsound food, contained in sect. 47

(g) *Sneath v. Taylor*, [1901] 2 K. B. 376; 25 Digest 76, 59; *Hunter v. Wintrup* (1904), 4 Adam, 471; 25 Digest 76, 59 i.

(h) See the cases cited in note (b), *ante*, p. 121.

(i) S. 28 (3); 8 Statutes 901.

(k) *Hudson v. Bridge* (1903), 88 L. T. 550; 25 Digest 90, 161.

(l) Footnote to Sched. I.; 8 Statutes 906.

(m) S. 28 (2); 8 Statutes 901.

(n) S. 31; 8 Statutes 904. The Government Chemist's Laboratory is at Clement's Inn Passage, Strand, W.C.2. His fee is two guineas, which should be sent with the sample. A covering letter should state the nature, but not the extent, of the adulteration alleged with any particulars likely to facilitate the examination, and information as to the date fixed for the adjourned hearing.

(o) *Foot v. Findlay*, [1909] 1 K. B. 1; 25 Digest 115, 335.

(p) *Dargie v. Dunbar* (1884), 11 R. (Ct. of Sess.) 37; 25 Digest 107, b; *Fyfe v. Hamilton* (1894), 1 Adam, 484; 25 Digest 79, r.

(q) S. 1; 8 Statutes 884.

(r) S. 27 (3); *ibid.*, 900.

(s) 8 Statutes 893.

(t) S. 26; 8 Statutes 899.

of the P.H. (London) Act, 1891 (*u*), will be dealt with in the title UNSOUND FOOD, and the regulations under the P.H. (Regulations as to Food) Act, 1907 (*a*) in the titles IMPORTED FOOD and MEAT, but some of the special powers as to food conferred by the L.C.C. (General Powers) Acts may be mentioned.

Sect. 8 of the Act of 1908 (*b*) requires certain conditions to be observed in any part of a building in which food is sold, or exposed for sale, or deposited for the purpose of sale or of preparation for sale or with a view to a future sale. It closely resembles sect. 72 of the P.H.A., 1925 (*c*), in force outside London. Sect. 16 of the Act of 1909 (*d*) allows the Common Council and the borough councils to require accommodation for the storage of food to be provided in houses occupied by more than one family of the working classes, which commenced to be so occupied after the passing of the Act.

Sect. 5 of the Act of 1932 (*e*) requires the registration with the Common Council or borough council of all premises used for the preparation or manufacture of sausages or potted and preserved meat, fish, or other food intended for sale. Power to refuse or cancel registration is given, subject to an appeal to a court of summary jurisdiction. Sect. 6 allows the L.C.C., as respects the County of London, and the Common Council, as respects the City of London, to make bye-laws for promoting sanitary and cleanly conditions in the manufacture, preparation, storage, transport or exposure for sale of any article intended to be sold for food. Sect. 7 of the Act requires every registered medical practitioner attendant on any person, if he suspects or becomes aware that such person is suffering from food poisoning, to send to the M.O.H. a written notification of the case. [272]

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- (*u*) 11 Statutes 1054.
(*b*) 11 Statutes 1291.
(*d*) 11 Statutes 1299.

- (*a*) 8 Statutes 362.
(*c*) 13 Statutes 1148.
(*e*) 25 Statutes 306.

FOOD AND DRUGS AUTHORITIES

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See also titles :

ANALYST ; ARTIFICIAL CREAM ; BUTTER, MARGARINE AND CHEESE ; CONDENSED MILK ; FOOD AND DRUGS ;	IMPORTED FOOD ; INSPECTORS OF FOOD AND DRUGS ; MILK AND DAIRIES ; PRESERVATIVES ; SAMPLING OF FOOD AND DRUGS.
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Definition.—The authorities known as “ Food and Drugs Authorities,” that is, authorities which have the duty of enforcing the Food and Drugs (Adulteration) Act, 1928 (*a*), are under sect. 13 of that Act (*b*) : (1) in the City of London, the Common Council ; (2) in any other part of the administrative County of London, the metropolitan borough council ; (3) in a county borough, or a borough having a separate police establishment, or a borough which had according to the census of 1881 a population of not less than 10,000 and which had on August 13, 1888, and for the time being has, a separate court of quarter sessions, the council of the borough ; (4) in any other area, the county council. In some statutes enacted before the Act of 1928, these authorities are referred to as authorities authorised to appoint an analyst for the purposes of the Sale of Food and Drugs Acts, 1875 to 1907 (*c*). [273]

Duties under the Act of 1928.—A food and drugs authority have a general, but definite, duty so to exercise their powers as to provide securities for the sale of food and drugs in a pure and genuine condition (*d*). In particular, they must direct their officers to procure samples for analysis (*d*), appoint a public analyst (*e*), transmit annually to the M. of H. certified copies of the public analyst’s quarterly report, at such time and in such form as the Minister may direct (*f*), register factories of margarine, margarine cheese or milk blended butter, premises where wholesale dealing in those articles is carried on, and premises in which butter is blended or reworked by way of trade ; and notify all such registrations to the M. of A. & F. (*g*). [274]

(*a*) 8 Statutes 884—908.

(*b*) *Ibid.*, 893.

(*c*) Now repealed and replaced by the Act of 1928.

(*d*) Act of 1928, s. 14 (1) ; 8 Statutes 893.

(*e*) S. 15 (1) ; *ibid.*, 894. See title ANALYST.

(*f*) S. 25 ; *ibid.*, 899. For the form of the quarterly return, see M. of H. Memo. 36, Foods, January, 1929.

(*g*) S. 8 ; 8 Statutes 890. See title BUTTER, MARGARINE AND CHEESE.

Duties and Powers under other Statutes.—Food and drugs authorities, as such, have also the duty of enforcing the Artificial Cream Act, 1929 (*h*), and of registering premises under that Act; of enforcing sects. 3 and 4 of the Milk and Dairies (Amendment) Act, 1922 (*i*), and, so far as the authority are a licensing authority under that Act, the Milk (Special Designations) Orders, 1923 and 1934 (*k*); and regulations under the P.H.A. dealing with preservatives and colouring matters in food (*l*), condensed milk (*m*) and dried milk (*n*). Food and drugs authorities are also empowered, though not obliged, to enforce certain provisions of the Merchandise Marks Act, 1926 (*o*), and orders made thereunder with respect to the labelling or marking of imported foods on sale or exposure for sale (*p*). The inspection of imported food is, however, mainly conducted by officers of the customs and excise, and in some instances of the port sanitary authority. [275]

Failure to Perform Duties.—If a food and drugs authority neglect to appoint a public analyst, *semble* the M. of H. may by *mandamus* compel them to do so (*q*). If the authority fail to exercise their duties under the Act of 1928 in other respects, the M. of H. or the M. of A. & F. may by order empower an officer to execute the necessary work at the authority's expense in relation to any article of food mentioned in the order (*r*). This power to act in default is never in fact exercised, but in practice it is not unusual for the M. of H. to make representations or suggestions to a food and drugs authority, with the object of increasing the number of samples taken or improving administrative methods. The M. of H. issue annually a brochure reproducing extracts from their annual report on the sale of food and drugs, and an abstract of reports of public analysts, showing the numbers of samples analysed and the number adversely reported on in each administrative area (*s*). This publication is of value to officers who have to decide what samples shall be taken. [276]

Other Authorities Empowered to Act.—While it is only the food and drugs authority, as defined above, who are required by the Act of 1928 to enforce the statute, other local authorities are entitled, if they so choose, to supplement, at their own expense and in their respective areas, the work of the food and drugs authority. This applies particularly to the smaller non-county boroughs, and to urban and rural districts, the councils of which may, through their M.O.H. or sanitary inspector, procure samples, submit them to the public analyst for the county, and institute any necessary proceedings (*t*). The general power to institute prosecutions for the protection or promotion of the

(*h*) S. 4; 8 Statutes 909. See title ARTIFICIAL CREAM.

(*i*) S. 10; *ibid.*, 882. S. 3 of the Act of 1922 is now repealed by s. 10 of the Milk Act, 1934, and the new s. 3 in s. 10 of that Act (27 Statutes 16) substituted for it. See title MILK AND DAIRIES.

(*k*) S.R. & O., 1923, No. 601; 1934, No. 1317.

(*l*) S.R. & O., 1925, No. 775; 1926, No. 1557; and 1927, No. 577. See title PRESERVATIVES.

(*m*) S.R. & O., 1923, No. 509; 1927, No. 1092. See title CONDENSED MILK.

(*n*) S.R. & O., 1923, No. 1323; 1927, No. 1093. See title CONDENSED MILK.

(*o*) See s. 9; 19 Statutes 904.

(*p*) See title IMPORTED FOOD.

(*q*) *R. v. Leicester Union*, [1899] 2 Q. B. 632; 16 Digest 278, 901, as to the appointment of a vaccination officer.

(*r*) S. 14 (2); 8 Statutes 893.

(*s*) The extracts for 1933-34 may be purchased of H.M. Stationery Office for 4d.

(*t*) *Worthington v. Kyme* (1905), 93 L. T. 546; 25 Digest 104, 275.

interests of the inhabitants of the area is to be found in sect. 276 of the L.G.A., 1933 (*u*), and this power may perhaps be available in relation to the sale of food and drugs, though it cannot have been intended that a borough or district council should usurp the functions of the county council, and the power itself is subject to somewhat narrower limits than might, at first sight, be apparent (*a*). [277]

Appointment of Officers.—Special powers in the matter of procuring samples and enforcing the Act of 1928 are conferred by sect. 16 of that Act (*b*) on officers who are known as “sampling officers,” in the service of a food and drugs authority. The officer must be an M.O.H., sanitary inspector, inspector of weights and measures, inspector of markets, or a police constable. It is not possible for other officers to exercise the full statutory powers of a sampling officer (*c*); but a sampling officer may employ any person as an agent to procure samples on his behalf (*d*). This procedure should be and is, in practice, widely adopted, in order to ensure that the samples obtained are representative of the food supplied to the general public in the ordinary course of trading. They might not be representative if a sampling officer purchased all samples personally.

Every food and drugs authority must appoint an analyst (*e*). [278]

Powers of Prosecution.—When an infringement is discovered as the result of the analysis of a sample, the person who caused the analysis to be made has statutory power under sect. 27 (2) of the Act of 1928 (*f*) to institute a prosecution. That person will normally be the sampling officer or his official superior. Neither the officer nor the council is under any obligation to institute proceedings (*g*). This is a matter for discretion. In practice, some food and drugs authorities leave complete discretion in the hands of a responsible officer, while others instruct their officers to report infringements to a committee or sub-committee, who decide whether or not the officer shall institute a prosecution. Whatever the method chosen, it is desirable, in order to obviate any difficulties which might arise, that the council, by resolution, formally and generally empower one or more of their officers to enforce, and institute proceedings under, each Act and order, relating to food and drugs, administered by the council. In this connection reference may be made to sect. 277 of the L.G.A., 1933 (*h*), which allows a duly authorised officer to institute and conduct proceedings on behalf of his council before a court of summary jurisdiction (*i*). [279]

(*u*) 26 Statutes 452.

(*a*) See *Tynemouth Corpn. v. A.-G.*, [1899] A. C. 293; 33 Digest 83, 539.

(*b*) 8 Statutes 894.

(*c*) For these powers, see title INSPECTORS OF FOOD AND DRUGS.

(*d*) *Horder v. Scott* (1880), 5 Q. B. D. 552; 25 Digest 76, 53; *Stace v. Smith* (1880), 45 J. P. 141; 25 Digest 71, 9; *Garforth v. Esam* (1892), 56 J. P. 521; 25 Digest 71, 10; *Tyler v. Dairy Supply Co., Ltd.* (1908), 98 L. T. 867; 25 Digest 71, 12.

(*e*) Act of 1928, s. 15; 8 Statutes 894.

(*f*) 8 Statutes 900. It is clear, and it has been decided in an Irish case (*Connor v. Bullin*, [1902] 2 I. R. 569; Digest (Supp.)) that the officer may take proceedings at his own discretion.

(*g*) In spite of the fact that words are employed in s. 19 (2) of the Act which might seem to suggest the contrary.

(*h*) 26 Statutes 452.

(*i*) For proof of an officers' authority, see title INSPECTORS OF FOOD AND DRUGS.

Expenses of Authorities.—Expenses of food and drugs authorities under the Act of 1928 (and also under the Artificial Cream Act, 1929, and the Merchandise Marks Act, 1926) are to be defrayed out of the general rate fund, except in counties in which there is a municipal borough which is a food and drugs authority and has a separate court of quarter sessions, in which case the county council makes a precept for special county purposes from which the borough is exempt (*k*). If a municipal borough has a separate police establishment and the council are a food and drugs authority, although there is no separate court of quarter sessions, the borough may retain any sum levied therein under the county council's precept in relation to Food and Drugs Act expenses (*k*).
[280]

London.—For the authorities in London, see *ante*, p. 128.

(*k*) Act of 1928, s. 26 ; 8 Statutes 899.

FOOTPATHS

See DEDICATION AND ADOPTION OF HIGHWAYS ; ROADS CLASSIFICATION.

FORESHORE

See ESPLANADES, PROMENADES AND BEACHES ; SEA DEFENCE WORKS ; SEASHORE.

FORESTRY

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Forestry Commission.—The Forestry Commission were established by the Forestry Act, 1919, and consist of not more than ten members (*a*). At present there are nine Commissioners appointed by His Majesty by warrant under the sign manual, one of their number being appointed

(*a*) Forestry Act, 1919, s. 1, as amended by Forestry Act 1927 s. 1 ; 3 Statutes 443, 464.

chairman, whilst two must have special knowledge and experience of forestry in Scotland, and at least one must have scientific attainments and a technical knowledge of forestry. Not more than three of the commissioners may receive salaries determined by the Treasury, the total of which cannot exceed £4,500 in the aggregate (*b*). The term of office of a commissioner is five years, members of the Commission being eligible for reappointment. Contact with Parliament is secured by the provision that one of the unpaid members shall be a member of the House of Commons. Casual vacancies are filled by appointing a new member to continue in office for the remainder of the period of office of the commissioner whose place he takes. In 1920, the Commissioners were constituted a body corporate by Royal Charter in order to simplify the procedure for the conveyance of land (*c*). [281]

Proceedings of Commissioners.—By sect. 2 of the Forestry Act, 1919 (*d*), the Commissioners are empowered to act by three of their number, notwithstanding the existence of any vacancy, and to regulate their own procedure. Under the title of "The Forestry Commissioners" they may sue and be sued (*e*), and their official seal is to be officially and judicially noticed when authenticated by any commissioner or by the secretary to the Commissioners or by some other person authorised by them to act on his behalf (*f*). Every document purporting to be an order or other instrument issued by the Commission must be received in evidence without further proof (unless the contrary is shown) if it is sealed and duly authenticated, or signed by the secretary or by some person authorised by the Commissioners to act on his behalf (*g*). The provisions of the Documentary Evidence Acts, 1868 and 1882 (*h*), relating to the proof of orders, regulations, etc., are made applicable to the Commissioners (*i*). [282]

Officers and Servants.—Under sect. 2 (2) of the Act of 1919 the Commissioners may employ such officers and servants as they think necessary, and may determine the salaries or other remuneration to be paid, provided that the consent of the Treasury is first obtained. The Commissioners are also authorised by sect. 5 of the Act (*k*) to appoint three assistant commissioners to exercise for them certain of their administrative powers and duties, and such other of their powers as they may determine from time to time. One assistant commissioner is appointed for England and Wales, one for Ireland and the other for Scotland. The salaries of the assistant commissioners are fixed by the Treasury. The Forestry Commissioners are further empowered to make

(*b*) The Forestry Commission may make arrangements for the superannuation of the salaried commissioners; Forestry (Transfer of Woods) Act, 1923, s. 6; 3 Statutes 461.

(*c*) Order in Council approving draft charter establishing the Forestry Commissioners; S.R. & O., 1920, No. 646.

(*d*) 3 Statutes 444.

(*e*) See *Rowland v. Air Council* (1923), 39 T. L. R. 228; Digest (Supp.). This case decided that the similar words contained in the Air Force (Constitution) Act, 1917, s. 10 (17 Statutes 303), could not be construed so as to include the right to proceed by writ against the Department, or to enforce a cause of action which could not be enforced against the Crown. The fact, however, that the Forestry Commissioners have been constituted a body corporate by charter might make the ruling in this case inapplicable.

(*f*) S. 2 (3); 3 Statutes 444.

(*g*) S. 2 (4); *ibid.*

(*h*) 8 Statutes 230, 239.

(*i*) S. 2 (5); 3 Statutes 444.

(*k*) 3 Statutes 447.

schemes for the superannuation of their officers, subject to the approval of the Treasury (*l*). Any officer of the Commissioners, or any other person authorised by them, may enter on and survey any land for the purpose of ascertaining whether it is suitable for afforestation, or to inspect timber thereon, or in connection with the exercise of any of the powers or duties of the Commissioners, but an officer or other person must produce his authority when required to do so (*m*). [283]

Powers and Duties of Commissioners.—It is the general duty of the Commissioners to promote the interests of forestry, and to develop afforestation and the production and supply of timber in Great Britain. Certain specific powers are transferred to them by sect. 3 (2) of the Forestry Act, 1919, such as the exercise of powers under the Destructive Insects and Pests Acts, 1877 and 1907 (*n*). In so far as those powers relate to insects or pests destructive only to forest trees and timber (*o*), the transfer is absolute, but in so far as these powers relate to insects or pests destructive or injurious to fruit trees or farm crops, and to forest trees and timber, they must be exercised by the Commissioners in consultation with the Agricultural Departments. Arrangements may, however, be made for the Agricultural Departments to continue to exercise the transferred powers on behalf of the Commissioners (*p*). The Commissioners also have general powers, subject to the directions of the Treasury, to do any of the following things : (1) buy, sell or lease land (*q*) ; (2) buy and sell standing timber ; (3) undertake the management of any woods or forests owned by any persons, including those belonging to any local authority, or give assistance or advice to any such persons ; (4) establish and carry on or aid in the establishment and carrying on of woodland industries ; (5) collect and publish information and statistics, make experiments and publish the results, and establish or aid schools or other educational institutions to promote and develop instruction and training in forestry ; (6) make inquiries for the purpose of securing an adequate supply of timber in Great Britain (*r*) ; (7) accept any gift made to them for any of the purposes of the Forestry Act, 1919 (*s*). An interesting account of the activities of the Forestry Commissioners for the first fifteen years of their existence is published in their fifteenth Annual Report, 1935. So far as local authorities are concerned, their achievements have been limited to the establishment of a successful profit-sharing scheme with the Liverpool Corporation in connection with the afforestation of the catchment area of the Vyrnwy Reservoir, the provision of the planting grants later referred to, and the giving of advice to any authority who may

(*l*) Act of 1919, s. 10 (2) ; 3 Statutes 450. Under this sub-section the Treasury determined by S.R. & O., 1920, No. 102, that the Forestry Fund was a public fund within the meaning of s. 4 of the Superannuation Act, 1892 (16 Statutes 686).

(*m*) Forestry Act, 1919, s. 9 ; 3 Statutes 449.

(*n*) 1 Statutes 62, 69.

(*o*) See Watermark Disease (Essex) Order of January 2, 1933 ; S.R. & O., 1933, p. 2123.

(*p*) Forestry Act, 1919, s. 3 (2). See the Importation of Elm Trees and Conifers (Prohibition) Order, 1933 ; S.R. & O., 1933, No. 1011.

(*q*) Under the proviso to s. 3 (3) of the Act, the commissioners must consult the M. of A. & F. in each case before action is taken, and when selling or disposing of land must give the Ministry the opportunity of acquiring it. S. 7 of the Act gives the commissioners power to acquire land compulsorily if authorised by an order of the Development Commissioners.

(*r*) Forestry Act, 1919, s. 3 (3) ; 3 Statutes 445.

(*s*) *Ibid.*, s. 8 (3) ; 3 Statutes 449.

require help regarding the planting of forest land, the formation of nurseries, or the protection or thinning of existing woods (*t*). [284]

Consultative Committees.—Sect. 6 of the Forestry Act, 1919 (*u*), makes provision for the establishment by Order in Council of three consultative committees who are respectively to be responsible for advising and assisting the Forestry Commissioners for England, for Wales, Ireland and Scotland respectively. The order must provide for the inclusion among the members of each of these committees of: (1) a representative of the M. of A. & F.; or of the Department of Agriculture for Scotland and of Ireland; (2) persons having practical experience of matters relating to forestry, woodcraft and woodland industries; (3) representatives of labour; (4) representatives of county councils and other local bodies interested in forestry; (5) representatives of societies existing for the promotion of afforestation; and (6) representatives of woodland owners. The detailed constitution of the consultative committees was prescribed by the Forestry (Consultative Committees) Order, 1920 (*a*). The committees consist of not more than thirty members, the actual number being fixed by the Forestry Commissioners. The members are appointed for three years, the commissioners also appointing the chairmen and the secretaries. Provisions governing the proceedings at the meetings of the committees are set out in Art. 2 of the order. [285]

Finance.—All salaries and other expenses of the Commissioners are a charge on the Forestry Fund established by sect. 8 of the Forestry Act, 1919 (*b*). Parliamentary grants are paid into this fund from time to time, together with the sums received by the Commissioners from any transactions such as the sale of land or timber or otherwise. All rights and liabilities of the Treasury in respect of advances made on the recommendation of the Development Commissioners for the purposes of forestry have been transferred to the Forestry Commissioners (*c*). The Commissioners are empowered to make advances by way of grant to persons (including local authorities) for the afforestation or re-planting of land (*d*). By sect. 5 (2) of the Act of 1923, the House of Commons (Disqualification) Act, 1782, and the House of Commons (Disqualifications) Act, 1801 (*e*), are not to be read as extending to the acceptance of any such advance by a Member of Parliament, unless he is a Forestry Commissioner. The Commissioners are prepared to make grants in approved cases up to certain limits for each acre planted with conifers or hardwoods as follows:

- (1) *Conifers*.—Up to £2 an acre planted and thereafter maintained as a forest crop.
- (2) *Hardwoods*.—For every acre planted with oak, ash, beech, sycamore, chestnut or other approved species, and thereafter

(*t*) See also Second Annual Report, 1921, p. 35.

(*u*) 3 Statutes 447.

(*a*) S.R. & O., 1920, No. 647, as amended by the Forestry (Consultative Committees) Order, 1928; S.R. & O., 1928, No. 247. For a list of the sub-committees appointed by the consultative committees, see First Annual Report of the Forestry Commissioners, 1921.

(*b*) 3 Statutes 449.

(*c*) Forestry (Transfer of Woods) Act, 1923, s. 2; 3 Statutes 460.

(*d*) Forestry Act, 1919, s. 3 (3) (*d*), as amended by Forestry (Transfer of Woods) Act, 1923, s. 5 (1); 3 Statutes 445, 461.

(*e*) 12 Statutes 448, 456.

maintained as an area for the production of hardwoods; up to (A) £4 per acre for oak or ash; (B) £3 per acre for beech, sycamore or chestnut; and (C) £2 per acre for other approved species. [286]

The Commissioners have received applications for grants from time to time from local authorities, particularly in connection with the planting of areas which have been rendered derelict and unsightly by the closing down of collieries. Owing to the fact that such areas are, as a rule, unsuitable for the production of timber, or are too small in extent for economical management, the Commissioners have not yet been able to comply with any of these applications. Local authorities and other corporate owners of land are, however, eligible for such grants, but they are made for commercial planting only. [287]

Bye-laws.—The Commissioners possess, under sect. 2 of the Forestry Act, 1927 (*f*), power to make and enforce bye-laws relating to land vested in them, or under their management or control, to which the public have access. The matters with which these bye-laws may deal are restricted to (i.) the preservation of any trees or timber on the land, or of any of the Commissioners' property, (ii.) the prohibition or regulation of any act or thing tending to injure or disfigure the land or its amenities, and (iii.) the regulation of the reasonable use of the land by the public for the purposes of exercise and recreation.

Three statutory limitations are placed on bye-laws made under this section: (1) they must not take away or injuriously affect any estate, interest, right of common, or other profitable or beneficial right affecting any land, except with the consent of the person entitled to exercise it; (2) they must not apply to any common which is subject to any scheme or regulation made under the Metropolitan Commons Acts, 1866 to 1898, or the Inclosure Acts, 1845 to 1882, or the Commons Act, 1899 (*g*); (3) no bye-laws must be made affecting the New Forest or the Forest of Dean except after consultation with the verderers of these forests. Bye-laws affecting these forests have been made.

Before any bye-law can come into operation, a draft must be laid before both Houses of Parliament for a period of not less than twenty-one days, and if either House presents a petition praying that it shall be annulled, no further proceedings may be taken regarding it, without prejudice, however, to the making of a new draft bye-law (*h*). [288]

Enforcement of Bye-laws.—Under sect. 2 (3) of the Forestry Act, 1927 (*i*), the Commissioners may authorise any of their officers or servants to enforce any bye-laws on their behalf, and to remove or exclude after due warning from any land to which the bye-laws relate any person who commits, or who is reasonably suspected of committing, an offence against them, or against the Vagrancy Act, 1824 (*k*). Failure to comply with the bye-laws, a contravention of them, or the obstruction of an officer or servant of the Commissioners in carrying out any of his duties in connection with them, renders the offender liable to a fine of not exceeding £5 on summary conviction, and, in the case of a continuing

(*f*) 3 Statutes 465.

(*g*) See 2 Statutes 443—612.

(*h*) Forestry Act, 1927, s. 2 (2); 3 Statutes 465. See also title BYE-LAWS.

(*i*) 3 Statutes 465.

(*k*) 12 Statutes 913. Amended by Vagrancy Act, 1935; 25 & 26 Geo. 5, c. 20.

offence, to a further fine not exceeding 10s. a day (*l*). This is without prejudice to the powers of the verderers of the New Forest and the Forest of Dean to inquire in their courts into offences which are alleged to have been committed within their jurisdiction, and in order further to simplify matters it is provided that the forest courts shall be deemed to be courts of summary jurisdiction. For the further protection of the verderers of the New Forest and the Forest of Dean it is also provided that the bye-laws made by the Commissioners are not to prejudice those made by the verderers under any Act (*m*).

By s. 2 (6) of the Act of 1927 (*n*), any fine imposed for infringement of these bye-laws is to be paid to the Commissioners, unless the court for some special reason orders otherwise. It should, however, be noted that this rule is subject to sect. 5 of the Criminal Justice Administration Act, 1914 (*o*), to the effect that fines shall in the first instance be applied to the payment of court and police fees. [289]

Damage to Trees by Vermin.—Where the Forestry Commissioners are satisfied that trees are being damaged, or are likely to be damaged by rabbits, hares, or vermin (including squirrels), owing to the failure of an occupier of land to kill these animals on the land in his occupation, or to take steps to prevent the damage arising, the Commissioners may, under sect. 4 of the Forestry Act, 1919 (*p*), authorise a competent person in writing to enter on the land and destroy the animals causing the damage. The Commissioners may then recover the net cost incurred from the occupier summarily as a civil debt. Before taking action they must give the occupier and owner an opportunity of destroying the animals, or of taking steps to prevent the damage arising in the future. A person who is authorised by the Commissioners to act on their behalf in this manner must produce his authority if he is required to do so. Any person obstructing him in the exercise of his duties is liable on summary conviction to a fine not exceeding £20. The person entitled to kill rabbits, hares or vermin on any common land is deemed to be the occupier of the land for the purposes of the section. [290]

Preservation of Trees by Town Planning Schemes.—A planning authority is authorised by sect. 46 of the Town and Country Planning Act, 1932 (*q*), to insert in planning schemes provisions for the preservation of single trees and groups of trees, and in addition to specify areas of woodland as areas to be protected under the section. The question of the preservation of single trees and groups of trees is outside the scope of this article. With regard to protected areas of woodland, sect. 46 (2) allows an obligation to be imposed on the owner by the scheme to replant, if there is any felling. The replanting is to be in accordance with the practice of good forestry. Any question between the owner and the responsible authority regarding the practice of good forestry is, on the application of either party, to be determined by the Forestry Commissioners (sect. 46 (3)). Sect. 46 (2) expressly provides that with the exception of the powers mentioned above, a scheme is not to impose any control over forestry operations.

(*l*) Act of 1927, s. 2 (4) ; 3 Statutes 465.

(*n*) 3 Statutes 466.

(*p*) 3 Statutes 446.

(*q*) 25 Statutes 512. See also title TOWN PLANNING SCHEMES.

(*m*) *Ibid.*, s. 3 (3) ; *ibid.*, 466.

(*o*) 11 Statutes 373.

Clause 48 of the Model Clauses (r) prepared by the M. of H. under the Act of 1932 carries out the provisions of sect. 46 as to protected areas simply by giving a list of such areas, making a reference to the section and ordaining that if any part of the specified areas is felled it is to be replanted in accordance with the practice of good forestry. It is obvious that, though the general purpose of the scheme in such a matter may be the securing of amenities, the Act enables a local authority to take a far-sighted view of amenities. [291]

(r) Published in 1935, and to be purchased of H.M. Stationery Office. Price 1s.

FORESTS

See HUNDREDS.

FORMULA

See GENERAL EXCHEQUER GRANTS.

FOUNTAINS

*See DRINKING FOUNTAINS AND TROUGHS ; MEMORIALS, WAR
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FREEDOM OF CITY OR BOROUGH

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Freemen.—Before the passing of the Municipal Corporations Act, 1835, the freemen of a municipal borough formed a constituent part of the corporation and as such enjoyed special rights and privileges. Each borough admitted freemen according to its own peculiar custom and bye-laws. The rights and privileges of a freeman, though varying in different boroughs, generally included a right to vote at parliamentary elections for the borough and exemption from tolls and dues. Before the Representation of the People Act, 1832 (*a*), in many parliamentary boroughs the electors consisted solely of the freemen. By sect. 6 of the Municipal Corporations Act, 1835, the freemen ceased as such to form a part of the body corporate (*b*). The Act of 1835 respected existing usages, however, and by sect. 2 every person who was then a freeman or who was qualified to become a freeman, retained a right to a share in the corporate property, commons and public stock. The right to be admitted as a freeman of the borough depended on the charter and the custom of the borough, and many variations existed. Generally the freedom of the borough might be claimed by birth, servitude (*i.e.* apprenticeship) to a freeman, purchase, gift or marriage.

When a number of municipal corporations were dissolved by sect. 3 of the Municipal Corporations Act, 1883 (*c*), sect. 10 of the Act contained an elaborate saving for the rights of the inhabitants, freemen and burgesses of the dissolved borough in its corporate property and charities. This saving applied not only to the then existing freemen and burgesses, but to persons who in future would possess the qualifications necessary before the passage of the Act of 1883 and who fulfilled every necessary condition, so far as it was capable of being fulfilled.

The admission of freemen is now regulated by Part XIV. of L.G.A., 1933 (*d*), which has repealed and re-enacted sects. 202—207 of the Municipal Corporations Act, 1882 (*e*). By sect. 305 of the Act of 1933 (*f*), the term “freeman” includes any person of the class whose rights and interests were reserved by the Act of 1835 under the name either of freemen or of burgesses. By sect. 259 (*g*), no person can be admitted a freeman by gift or by purchase; that is to say that the only qualifications which are now recognised are birth, servitude or marriage.

(*a*) 2 & 3 Will. 4, c. 45.

(*b*) See also *Lincoln Corp'n. v. Holmes Common Overseers* (1867), L. R. 2 Q. B. 482; 33 Digest 50, 302.

(*c*) 10 Statutes 674.

(*d*) 26 Statutes 445.

(*e*) 10 Statutes 641, 642.

(*f*) 26 Statutes 466.

(*g*) *Ibid.*, 445. S. 3 of the Municipal Corpn's. Act, 1835, was in the same terms.

The town clerk of most boroughs keeps a list which is called the "Freeman's Roll" and the name of any person who claims to be admitted a freeman by birth, servitude or marriage, when his claim has been examined by the mayor and established, is inscribed upon the roll by the town clerk. Sect. 260 of the Act (*h*) provides for the continuance of this practice where a freeman's roll was in existence immediately before June 1, 1934. [292]

Honorary Freemen.—It is the practice to confer the honorary freedom of the borough as a mark of distinction upon a person whom the council wishes to honour. Sect. 259 (2) of L.G.A., 1933 (*i*), substantially re-enacts the Honorary Freedom of Boroughs Act, 1885 (*k*), and provides that the council of a borough may from time to time, by the authority of not less than two-thirds of their number voting at a meeting of the council specially called for the purpose with notice of the object, admit to be honorary freemen of the borough persons of distinction and any persons who have rendered eminent services to the borough. But the admission of a person as an honorary freeman does not confer the right of sharing in the benefit of any hereditaments, common lands, or public stock of such borough or its council, or of any property held in whole or in part for any charitable use or trust. [293]

Voting for Parliament.—By sect. 17 of the Representation of the People Act, 1918 (*l*), it is provided that a freeman of the City of London, being a liveryman of one of the several companies who is entitled to be registered as a parliamentary elector in respect of a business premises qualification within the city, shall be entitled, if he thinks fit, to be entered (alternatively) in a separate list of liverymen in the register of parliamentary electors and to record his vote for Parliament as a liveryman. By sect. 17 (2) this provision applies to the freemen of any borough if the council of the borough so resolve, and the expression "freemen" includes any persons by whatever name called enjoying in that borough rights similar to those enjoyed by freemen of the City of London in that city. [294]

London. City of London.—The livery companies have a right of presenting their freemen to the Court of Aldermen and the Chamberlain to be admitted to the freedom of the City of London. The presentation itself does not technically make the liverymen freemen though their admission would not be refused if the law and customs of the City had been complied with. Other modes of admission to the freedom of the City are by servitude, by patrimony, and by redemption. Admission by servitude is open to any male of full age on satisfactory completion of his apprenticeship to a freeman. Admission by patrimony is open to the child (whether male or female), being of full age, of a freeman, if born in lawful wedlock after the father's admission. Admission by redemption or purchase is open, on payment of prescribed fees, to rate-payers on application to the Chamberlain (if they are not on the parliamentary register they must be approved by the Court of Common Council) and to such other persons as may be approved by the Court of Common Council, or, if presented through a livery company, by the Court of Aldermen.

(*h*) 26 Statutes 446.
(*k*) 10 Statutes 685.

(*i*) *Ibid.*, 445.
(*l*) 7 Statutes 559.

Metropolitan Borough Councils.—By sect. 62 (1) of the L.C.C. (General Powers) Act, 1927 (*m*), a power similar to that possessed by ordinary boroughs of conferring the distinction of the honorary freedom of the borough is given to metropolitan borough councils. [295]

(*m*) 11 Statutes 1398.

FREIGHT TRANSPORT HEREDITAMENTS

See DERATING.

FRESHWATER FISHERIES

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For pollution, see title POLLUTION OF RIVERS.

For River Lee, see title LEE CONSERVATORS.

See also titles : CONSERVANCY AUTHORITIES ;
SALMON AND TROUT FISHERIES ;
SEA FISHERIES.

Introductory.—The general control of freshwater fisheries in England and Wales is vested in the Minister of Agriculture and Fisheries (*a*) but is locally superintended by fishery boards, whose appointment, constitution and procedure are regulated by the Salmon and Freshwater Fisheries Act, 1923 (*b*), though by that Act the Minister is given power in certain cases where there is no board to act either on his own initiative or to appoint the necessary officers to enforce the provisions of the Act (*c*). The Act of 1923 consolidated, with amendments, eighteen older Acts directed at the control and preservation of inland fisheries in England and Wales and, with the addition of sect. 13 of the Fisheries Act, 1891 (*d*), as to prosecutions, and the amending Acts of 1929 (*e*) and 1935 constitute a complete code of statute law. It may be mentioned that by sect. 92 of the Act of 1923 (*f*) “freshwater fish” is defined as “any fish living in fresh water exclusive of salmon and trout and of any kinds of fish which migrate to and from tidal waters, and of eels and the

(*a*) M. of A. & F. Act, 1919, s. 1 ; 3 Statutes 451.

(*b*) 8 Statutes 780.

(*c*) See *post*, pp. 143, 145, 146.

(*d*) 8 Statutes 753.

(*e*) *Ibid.*, 840. This amended s. 32 of the Act of 1923 as to the sale of trout, and its effect is described at 8 Statutes 667.

(*f*) *Ibid.*, 833.

fry of eels" (*g*), but sects. 37, 38 of that Act were extended to eel or elver fisheries by the Act of 1935.

There is no common law right for the public to fish in non-tidal waters, even if navigable, nor can such right be acquired by prescription (*h*), while fisheries in canals and artificial watercourses belong to the owner of the soil abutting on the same, unless he has let or parted with them, or, in the case of a canal made under Act of Parliament, the Act has made special provision as to the fishery. As regards lakes and ponds of whatever size, the legal position is similar to that of non-tidal rivers (*h*). [296]

The Act of 1923 deals in Part I. with prohibited modes of taking fish, imposing severe penalties for offences; in Part II. with obstructions to the passage of fish; in Part III. with close seasons for the taking, sale and export of fish; in Parts IV. to VII. with fishery districts, fishery boards, bye-laws and fishery licences; in Part VIII. with powers of inspectors, water bailiffs, etc.; in Part IX. with legal procedure and evidence. In Part X. are included local provisions relating to the rivers Tweed, Esk, Severn and the Solway Firth, and various supplemental provisions.

The powers of the Minister of Agriculture and Fisheries may be summarised as follows. He may, by order, define the area of a fishery district and constitute and incorporate a fishery board for the district (*i*). For this purpose he may abolish any existing fishery board or board of conservators (*k*), constituted under any of the repealed Acts. He may also alter the area of any fishery district or the constitution of any fishery board or board of conservators. Furthermore, while providing for the general regulation of fisheries, he may grant licences for the artificial propagation of fish, approve, after due notice, of the licence duty of a fishing board and determine the amount to be paid, confirm orders of a fishery board limiting the number of licences, approve (or disapprove) the borrowing of money by a fishery board (*l*) and confirm their bye-laws. [297]

Close Season for Freshwater Fish.—No one may fish for freshwater fish between March 14 and June 16 in any year, though there are certain exceptions for private fisheries (*m*). There is, however, no weekly close time for such fish (*mm*). The fishing of eels with rod and line is also prohibited in the freshwater fish close season. [298]

Fishery Districts.—A fishery district is an area constituted and defined by an order made by the Minister of Agriculture and Fisheries (*n*) upon the application of (1) a fishery board constituted under the Act of 1923 or an Act repealed by that Act; or (2) a county council, including for this purpose the council of a county borough, and of certain boroughs with populations of 10,000 at the census of 1881

(*g*) "Salmon" and "trout" are separately defined by the same section.

(*h*) See Halsbury's Laws of England (Hailsham ed.), Vol. XV., pp. 52, 53.

(*i*) See *post*, "Fishery Districts."

(*k*) Boards of conservators had been appointed under Acts repealed by the Act of 1923 with powers as to salmon, trout and char and coarse fish.

(*l*) See *post*, p. 145.

(*m*) 1923 Act, s. 35; 8 Statutes 800.

(*mm*) As to the weekly close time for salmon and trout, see title SALMON AND TROUT FISHERIES, and Oke's Fishery Laws, 4th ed., p. 15.

(*n*) For the history and development of fishery boards, see Oke's Fishery Laws, 4th ed., p. 74. See also the Salmon and Freshwater Fisheries Regulations, 1924; S.R. & O., 1924, No. 576.

which are counties of a city or a town (o); or (3) owners of a quarter at least in value of the "several fisheries" (p) proposed to be regulated; or (4) a majority of persons holding licences to fish in public waters within the area of the proposed order; or (5) an association of persons which in the opinion of the Minister is sufficiently representative of fishing interests within that area (q). [299]

By sect. 40, before making an order the Minister must publish in the *London Gazette* notice of his intention, of the place where a draft order may be inspected, and of the time within which and the manner in which objections to the draft order may be made. He may also cause a public local inquiry to be held on any objections to the draft order. The order when settled and made must be published in the manner best calculated to bring it to the notice of the persons affected (sect. 40 (3)). It will then become final and have effect as an Act of Parliament unless within not more than thirty days a memorial is presented to the Minister by one of the classes of persons already mentioned, who are affected by it, praying that it shall not become law without the confirmation of Parliament. If there be no memorial presented, or a memorial be withdrawn, the Minister will confirm the order. If the memorial be not withdrawn, the order is provisional only and will have no effect unless confirmed by Parliament (sect. 40 (4)). The Minister may also under sect. 40 (6) make regulations with regard to the holding of, and procedure at, public local inquiries (r). The expenses incurred in respect of such an order are payable under sect. 41 in the case of a fishery board making the application, as ordinary expenses, and in the case of a county council out of the county fund, or in the case of a borough council out of the general rate fund (s). Any order relating to the River Lee as defined by the Lee Conservancy Act, 1868 (t), requires the consent of the conservancy board constituted under the Lee Conservancy Act, 1900 (u). [300]

Fishery Boards.—By sect. 92 of the Act of 1923, the expression "fishery board" means any board of conservators or other similar body constituted under that Act, or any enactment repealed by that Act, for the regulation of fisheries in a "fishery district." The general provisions of the Act relating to fishery boards apply therefore to boards constituted under a repealed enactment. With regard, however, to the fourteen provisional boards (x) constituted by provisional orders made under the repealed Salmon and Freshwater Fisheries Act, 1907, two modifications affecting their constitution are made by ss. 47, 48 of the Act of 1923 (a), which provide for the representation on a fishery board of salmon net fishermen and rod fishermen for fish other than salmon. When, again, any provision of the repealed Acts is by the terms of the provisional order inapplicable to any board, either wholly

(o) See s. 88; 8 Statutes 831. As to the boroughs last mentioned, see title COUNTY OF A CITY OR TOWN.

(p) A "several fishery" is an exclusive right of fishing in a given place, that is, no person has a co-extensive right with the owner in the subject claimed. See *Seymour v. Courtenay* (1771), 5 Burr. 2815, at p. 2817; 25 Digest 12, 81.

(q) See s. 39; 8 Statutes 803.

(r) See S.R. & O., 1924, No. 576, as to the expenses of an inquiry.

(s) See L.G.A., 1933, ss. 181, 185; 26 Statutes 405, 407.

(t) See title LEE CONSERVATORS.

(u) Act of 1923, s. 43; 8 Statutes 805.

(x) For names of these, see 8 Statutes 806.

(a) 8 Statutes 807, 808.

or in a modified form, the corresponding provision of the 1923 Act does not apply, or applies subject to that modification; see sect. 44. [301]

A fishery board consists of (1) appointed members, (2) representative members, and (3) *ex-officio* members.

Appointed Members.—Where a fishery district lies wholly within one county, the council of that county appoint a maximum of five members; where the fishery district does not lie wholly within one county, each of the county councils concerned appoint not more than three members (sect. 46). Notices of the appointment must be sent by the clerk of the county council to the clerk or other official of the fishery board. The term of office is one year, and should no appointment be made at the time when such should take place, the retiring members are deemed to be reappointed unless, by reason thereof, the members appointed by a county council exceed the statutory maximum. Casual vacancies occurring by death, resignation or otherwise are under sect. 51 of the Act (b) to be filled by the board (and only by the board), the person appointed holding office only for such time as the member vacating it would have held office if no vacancy had occurred. These provisions do not apply to boards constituted under the repealed Act of 1907 (c). [302]

Representative Members.—By sect. 48 (1), representative members of rod fishermen for fish other than salmon (d) are appointed or elected by the fishery board from holders of such licences, in accordance with any order made under Part IV. of the Act. In default of, or subject to, such provision, if the aggregate amount of duties for such licences does not exceed £50, one member is appointed; if it does exceed £50, one further member is appointed for each additional £50 or part thereof, but in a district where duties are payable for licences for salmon fishing with rod and line, the number of such representatives must not exceed one-third of the total members (e). The manner in which such representatives are appointed is a matter for the Minister, who may at any time sanction a scheme for that purpose, and until such scheme is sanctioned appoints representative members himself (f). In order that the representation shall be made on the £50 basis mentioned above, an obligation is imposed on the fishery board by sect. 48 (4) to cause to be sent to the Minister, on or before December 31 in each year, a certificate of the aggregate amount of duties paid during the preceding twelve months. Casual vacancies are filled in like manner as in the case of appointed members (g). Representatives of the net fishermen are provided for in sect. 47 of the Act. The basis of representation is similar to that of the rod fishermen and depends on the aggregate of the duties paid for net licences; but the number of such representatives must not exceed one-half of the total members of the fishery board (h). The provisions in sects. 47, 48 as to the representation of net fishermen and rod fishermen extend to fishery boards constituted under the repealed Act of 1907 (i). The mode of election of representative members of net fishermen is prescribed by the code of rules

(b) 8 Statutes 810.

(c) S. 44; 8 Statutes 806.

(d) As to the representation of net fishermen licensed to take salmon (which is excluded from the definition of "freshwater fish," in s. 92 of the Act), see s. 49 and note to s. 48 at 8 Statutes 808.

(e) S. 48 (1); 8 Statutes 808.

(f) S. 48 (2) (3).

(g) See *supra*.

(h) S. 47 (1); 8 Statutes 807.

(i) See ss. 47 (4), 48 (5); 8 Statutes 807, 808.

in the third schedule to the Act (*k*). To be qualified to vote a person must have paid a licence duty exceeding £1, and must either be resident within the district, or be the owner of land actually within, or within ten miles of the boundary of the district (sect. 49 (1)). Either the chairman of the board or some person appointed by him in writing acts as returning officer (sect. 49 (2)). [303]

Ex-officio Members.—These must be (i.) owners or occupiers of a fishery or fisheries within the district, which is or are assessed to the general rate on a gross value of £30 a year or more (*l*), (ii.) owners of lands in the district of an annual value not less than £100, having a frontage of not less than a mile to any waters over which the board have jurisdiction (*m*), having a right to fish in those waters, and having paid licence duty for the last preceding fishing season (*n*). Both owner and occupier are not entitled to act as *ex-officio* members at the same time in respect of the same fishery or fisheries, and if there should be more than one owner or occupier of the same fishery or fisheries, one only may act at the same time in respect of such fishery or fisheries (*n*). Furthermore, only one member (or an attorney or agent) of a corporation, company, or fishing association (or one representative of an infant or lunatic) may act as an *ex-officio* member (*o*). Any person claiming to be an *ex-officio* member must, before taking his seat, sign a declaration setting forth his qualification, and anyone making a false declaration is liable to a fine not exceeding £5 (*p*). Apparently these provisions do not extend to fishery boards constituted under the Act of 1907—see sect. 44 of the Act. [304]

Proceedings and Powers of Fishery Boards.—These can be summarised as follows (*q*): A fishery board constituted under the Act of 1923, or any enactment repealed by that Act, are a body corporate with perpetual succession and a common seal. They may hold lands and sell or lease any land not required for the board's purposes (*r*). They must meet for the dispatch of business and make regulations as to the election of a chairman, meetings, and the transaction of business (*s*). They may appoint committees consisting of their members (*t*), and must keep minutes (*u*). They may appoint a clerk and a sufficient number of water bailiffs and may remove any clerk or bailiff so appointed (*a*), but have no power to pay any remuneration to members as such (*b*). The board may also for the protection of their fisheries institute proceedings under the Rivers Pollution Prevention Acts, 1876 to 1893 (*c*), to prevent pollution of the waters within their

(*k*) See s. 49 (3); 8 Statutes 809.

(*l*) S. 50 (1) as amended by s. 69 (2) of R. & V.A., 1925; 14 Statutes 689.

(*m*) Where land has a frontage to both sides of any waters, the aggregate frontage is reckoned.

(*n*) S. 50 (1); 8 Statutes 809.

(*o*) The Act makes no provision for the settlement of disputes arising out of this matter.

(*p*) S. 50 (3) (4); 8 Statutes 810.

(*q*) For the mass of details included in the relevant sections of the Act, reference must be made to the Act. See *e.g.* ss. 52—58 in 8 Statutes 810—814.

(*r*) S. 52; 8 Statutes 810.

(*s*) S. 53. See also that section for "extraordinary meetings," "quorum," etc.

(*t*) S. 53 (2); 8 Statutes 811.

(*u*) S. 53 (4).

(*a*) S. 54.

(*b*) S. 54 (2). Travelling expenses to meetings cannot be repaid as the Sea Fisheries Regulation (Expenses) Act, 1930 (23 Statutes 125), does not extend to salmon and freshwater fishery boards.

(*c*) See title POLLUTION OF RIVERS.

district (*d*). A fishery board have no power to obtain funds from the local rate to meet their expenditure. [305]

Bye-laws.—A fishery board may make bye-laws for the various purposes set out in sect. 59 of the Act (*e*). No bye-law is to come into operation without the confirmation of the Minister (*f*) who may direct a public local inquiry regarding it, and disallow any bye-law, or with the consent of the fishery board modify it (*g*). Where, however, there is no fishery board controlling a fishery district, the Minister may himself make the bye-laws allowed by the Act (*h*). In the case of bye-laws of the fishery board, the machinery for making, confirming and publishing them is contained in sect. 60 of the Act (*i*). Bye-laws, when confirmed, are to be printed, and copies must be open for inspection without charge, or delivered by the clerk of the fishery board without charge, on application by persons who pay licence duty (*k*). Furthermore, before himself making a bye-law, the Minister must give notice of his intention so to do in a newspaper circulating in the particular district (*l*), and he cannot revoke a bye-law which is in force without holding a public local inquiry should the board demand one (*m*). [306]

Finance.—The principal source of a Fishery Board's revenue is the sale of licences, the nature of which vary according to the nature of the district. Rod licences are sold in practice through such agencies as fishing-tackle dealers, angling societies, hotel keepers and bailiffs, who receive a commission. For the purpose of defraying any expenditure incurred or to be incurred by them under the Act, a fishery board may, subject to the consent of the Minister of Agriculture and Fisheries, borrow money either on the security of any revenue receivable by them, or of any of their property (*n*). Since the provisions of the Commissioners Clauses Act, 1847 (*o*), with respect to mortgages are incorporated with the Act of 1923 (*p*), it follows that mortgages must be by deed under the common seal of the board, and may be in the form contained in Schedule B. to the Act of 1847 (*q*). The board must keep both a register of mortgages and of transfers thereof, the former to be open for inspection by interested persons, and transfers of mortgages must be by deed and may be in the form given in Schedule C. to the Act of 1847 (*r*). For further information, reference should be made to the above-mentioned provisions of the Act of 1847 (*s*).

Accounts of the receipts and disbursements are to be made up to December 31, and audited by an auditor appointed and paid by the board, the appointment being subject to the approval of the Minister, to whom must be sent, not later than January 31 following, a copy of the audited accounts and auditor's report (*t*). There is now no power of disallowance. Annual returns are to be prepared by the clerk (or other officer where there is no clerk) in such form and with such particulars, and sent to the Minister at such times, as the latter may direct (*u*). [307]

(*d*) S. 55; 8 Statutes 812.

(*f*) S. 60 (1) (*c*); 8 Statutes 817.

(*h*) S. 59 (1).

(*k*) S. 60 (1) (*f*).

(*m*) S. 60 (4).

(*o*) Ss. 75—88; 13 Statutes 439—443.

(*p*) By s. 56 of that Act; 8 Statutes 813.

(*q*) 13 Statutes 449.

(*s*) See also Oke's Fishery Laws, 4th ed., p. 101.

(*t*) Act of 1923, s. 57; 8 Statutes 814.

(*e*) 8 Statutes 814.

(*g*) S. 60 (1) (*e*).

(*i*) 8 Statutes 817.

(*l*) S. 60 (3); 8 Statutes 817.

(*n*) S. 56; 8 Statutes 813.

(*r*) *Ibid.*, 450.

(*u*) S. 58.

Licences.—Sects. 61 to 65 of the Act of 1923 (*a*) contain detailed provisions with respect to the issue, etc., of licences for salmon and trout (*b*), but the Minister of Agriculture and Fisheries, on the application of a fishery board, or on any such other application as he may deem sufficient, may extend sects. 61 to 64 of that Act either to all freshwater fish or to such as may be specified in the order, and either generally to all waters in the fishery district or to such as may be so specified; and either to all instruments or to such instruments as may be so specified (*c*). An order so made by the Minister must contain such scheme for the representation on the fishery board of members representative of persons licensed to fish with rod and line for freshwater fish as, subject to sect. 48 of the Act (*d*), the Minister deems desirable. It follows, therefore, that when an order is made for this extension, the representation of rod fishermen will be increased, as their number is dependent upon the amount of licence duty paid (*d*). Before, however, the Minister makes an order under sect. 65, he must under sub-sect. (4) of the section cause the proposed order, together with notice of his intention, to be published by the applicant in such manner as he may direct. He must also hold a local inquiry should any objection be made by a person affected by the order, which is not withdrawn (*e*). It is only possible within the limits of this article to indicate the scope of the provisions of the Act controlling the issue of licences. They are grouped in the Act under the following heads: 1. General provisions (sect. 61); 2. Limitation of the number of licences by order of the board confirmed by the Minister (sect. 62); 3. Penalty on use of unlicensed instruments for fishing (sect. 63); 4. Production of licence on demand (sect. 64). [308]

Legal Proceedings.—The object of sect. 13 of the Fisheries Act, 1891 (*f*), was to restore the ordinary rule as respects fishery prosecutions, that, on an offence, a criminal information may be laid by any person. It had previously been held in *Anderson v. Hamlin* (*g*) that under the Salmon and Freshwater Fisheries Acts then in force a prosecution must be instituted by direction of the fishery board.

By sect. 73 of the Act of 1923 (*h*), the Summary Jurisdiction Acts are applied to the recovery of penalties. Where no special penalty is provided for by a section of the Act, an offence against it carries with it a maximum fine of £50, and a continuing offence a fine of £5 a day during which the offence is continued after conviction (sect. 74). Unlicensed instruments used for catching fish and fish illegally taken are also liable to forfeiture. On the second conviction of a licensee, the court may order the licence to be forfeited and disqualify him for a period not exceeding one year from holding a licence, and where a member of a fishery board is convicted of an offence, the court may declare him to be disqualified as a member for such period as they think fit (sect. 74 (2), (4)). [308A]

Tweed, Solway and Severn.—The provisions of the Act of 1923 do

(a) 8 Statutes 818—822.

(b) These are not "freshwater fish," see s. 92 of the Act; 8 Statutes 833.

(c) S. 65; 8 Statutes 822. A list of any orders made during a given year will be found in each annual volume of S.R. & Os.

(d) See *ante*, p. 143.

(e) S. 65 (4); 8 Statutes 822.

(f) 8 Statutes 753.

(g) (1890), 25 Q. B. D. 221; 25 Digest 43, 394.

(h) 8 Statutes 825.

not apply to the River Tweed (*i*) while special provisions are applied to the Solway district (*k*) and the River Severn fishery district (*l*). [309]

London.—London presents no special features except as regards the River Thames (as to which see titles PORT OF LONDON AUTHORITY and THAMES CONSERVATORS) and the River Lee (as to which see title LEE CONSERVATORS and sect. 43 of the Act (*m*)). [310]

(*i*) S. 82. See also the Tweed Fisheries Amendment Act, 1859; 22 & 23 Vict. c. lxx.

(*k*) S. 84 and Fourth Schedule.

(*l*) S. 86; s. 87 is repealed by the amending Act of 1935.

(*m*) 8 Statutes 805.

FRONTAGERS

See PRIVATE STREETS.

FRUIT

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Unsound Fruit.—The exposure or deposit for sale of unsound fruit is a matter for action by borough and district councils under the P.H.A., 1875 (*a*). [311]

Adulteration.—The chief forms of adulteration are (1) the presence, on the skins of such fruit as apples and pears, of an excessive quantity of an arsenical deposit from the wash used for destroying insects on fruit-trees; (2) an excess of tin in canned fruit; and (3) the presence of preservatives, contrary to the regulations under the P.H.As., which limit the amount of sulphur dioxide allowed in fresh fruit and fruit-pulp intended to be made into jam, in various kinds of dried fruit and in crystallised glacé and cured fruit (*b*). Any of these forms of adulteration may be dealt with under the Food and Drugs (Adulteration) Act, 1928 (*c*). There have been many prosecutions under that Act for the sale of apples contaminated with a substantial amount of lead arsenate. It would be an offence under sect. 2 of the Act to sell dried apricots as dried peaches (*d*). [312]

(*a*) Ss. 116—119, as extended by s. 28 of P.H.A. Amendment Act, 1890, where in force; 13 Statutes 672, 673, 835. See title UNSOUND FOOD.

(*b*) Public Health (Preservatives, etc., in Food) Regulations, S.R. & O., 1925, No. 775; 1926, No. 1557; and 1927, No. 577; see title PRESERVATIVES.

(*c*) See s. 1 (4); 8 Statutes 884.

(*d*) See title FOOD AND DRUGS, *ante*, at p. 119.

Imported Fruit.—Imported fresh apples, raw tomatoes, currants, sultanas and raisins are the subject of marking orders under sect. 2 of the Merchandise Marks Act, 1926 (*e*), enforceable by food and drugs authorities (*f*). [313]

Sale by Weight.—Short weight in the sale of fruit of any kind is a matter for the weights and measures authorities and may be dealt with under the Sale of Food (Weights and Measures) Act, 1926 (*g*). The only kinds of fruit that must be sold by weight are dried currants, raisins and sultanas (*h*). It is not an offence to sell fresh fruits otherwise than by weight, *e.g.* strawberries by the basket. [314]

(*e*) 19 Statutes 899. See title IMPORTED FOOD.

(*f*) See title FOOD AND DRUGS AUTHORITIES, *ante*, p. 128.

(*g*) 20 Statutes 419. See title WEIGHTS AND MEASURES.

(*h*) Sched. I., Part III. ; 20 Statutes 427.

FRUIT AND HOP PICKERS

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See also title : TENTS, VANS AND SHEDS.

Bye-Laws.—By sect. 314 of P.H.A., 1875 (*a*), any borough council or district council may make bye-laws for securing the decent lodging and accommodation of persons engaged in hop picking within the borough or district. The P.H. (Fruit Pickers Lodgings) Act, 1882 (*b*), which is to be construed as one with P.H.A., 1875, extends the scope of sect. 314 so as to include the power of making bye-laws for the same purposes in respect of persons engaged in the picking of fruit and vegetables. The procedure in making such bye-laws is now governed by sect. 250 of L.G.A., 1933 (*c*). The confirming authority is the M. of H., and a draft should be submitted to the Ministry before bye-laws are adopted by the council. By sect. 251 of the Act of 1933, the bye-laws may provide for reasonable fines, recoverable on summary conviction, and by sect. 183 of the Act of 1875 such fines may not exceed the sum of £5 for each offence, and for a continuing offence, a further fine not exceeding 40s. for each day during which the offence continues after written notice of the offence from the local authority. [315]

The model bye-laws of the M. of H. regulating accommodation for hop pickers and fruit and vegetable pickers are expressed to apply to lodgings not ordinarily occupied for human habitation. A new edition of the model bye-laws was published in 1931 (*d*). The principal bye-laws are directed at securing cleanliness, dryness, and adequate ventilation and lighting. Both before a new lodging is erected and before an

(*a*) 13 Statutes 757.

(*b*) *Ibid.*, 797.

(*c*) 26 Statutes 440.

(*d*) This was reprinted in booklet form in 1934 and may be purchased for 3d. of H.M. Stationery Office, Kingsway, W.C.2.

existing lodging is used, notice must be given to the council. Other bye-laws are directed at the prevention of overcrowding, the separation of the sexes, and the provision of sanitary conveniences, bedding, accommodation for cooking and drying clothes, and a supply of water. The premises must be thoroughly cleansed, and limewashed or disinfected before occupation, and refuse, etc., must be removed daily. If lodgings above the ground floor are intended to be used for sleeping, means of escape from fire by stairways must be provided. [316]

General Supervision.—In addition to bye-laws under the enactments already mentioned, some control over those pickers who occupy a tent, van, shed or similar structure, may be exercised by the council under sect. 9 of the Housing of the Working Classes Act, 1885, as extended by sect. 43 of the P.H.A., 1925 (e), where that section is in force. See title TENTS, VANS AND SHEDS. [317]

The recruitment of hop pickers and fruit pickers is frequently undertaken by the Ministry of Labour, working through the employment exchanges, and local authorities for public assistance, public health (f), elementary education, and maternity and child welfare can usually keep in touch with the responsible officers of the Ministry of Labour, with a view to avoiding unnecessary importation of labour into their areas, and also in order to make provision for the control and welfare of workers imported from other areas. In districts to which entire families come for hop and fruit picking, attention must be given to the children who accompany the workers. The maternity and child welfare authorities, generally acting in co-operation with voluntary agencies, should ensure that any necessary assistance is afforded to mothers and young children. In the case of older children, the local authority for elementary education should keep observation on the arrangements for employment in order to prevent breaches of the provisions of Part II. of the Children and Young Persons Act, 1933 (g), and of bye-laws made thereunder. Where necessary, attendance at school should be enforced. [318]

(e) 13 Statutes 809, 1133.

(f) The periodical movement of labour for hop and fruit picking should be considered in planning casual ward and isolation hospital accommodation.

(g) 26 Statutes 181.

GAME

See ANIMALS, KEEPING OF.

GAME DEALERS

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See also titles : LOCAL TAXATION LICENCES ;
REGULATED INDUSTRIES.

Licensing by Council.—The powers of local authorities to grant licences to deal in game (*a*) are derived from the Game Act, 1831 (*b*), as amended by sect. 27 of L.G.A., 1894 (*c*). Sect. 2 of the first Act defines “game,” for the purpose of that Act, as including hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. By sect. 17 of the Act of 1831 persons holding game certificates (*d*) are enabled to sell game to persons licensed to deal in game, and by sect. 18 justices were required to hold special sessions in July of each year for the purpose of granting licences at their discretion to deal in game, to any person being a householder or keeper of a shop or stall in the petty sessional division or district. The following classes of persons may not be licensed to deal in game: innkeepers, victuallers, persons licensed to sell beer by retail (*e*), owners, guards or drivers of a mail coach or other vehicle employed in the conveyance of the mails of letters, or of any stage coach, stage wagon, van, or other public conveyance; carriers; higglers; persons in the employment of any of the above-mentioned persons. The holding of special sessions in July only under the Act of 1831 was abolished by 2 & 3 Vict. c. 35, s. 4 (*f*), which permitted the holding of special sessions for the granting of game dealers’ licences at any time subsequent to July, and provided that all game dealers’ licences should expire on July 1 following the grant thereof. [319]

(a) This title deals only with licences formerly granted by the justices under the Game Act, 1831. As to the functions of county and county borough councils with reference to excise licences to deal in game, see title **LOCAL TAXATION LICENCES**.

(b) 8 Statutes 1066—1082.

(c) 10 Statutes 797.

(d) Now licences to kill game (see Game Licences Act, 1860, s. 6; 8 Statutes 1087).

(e) As to the position of persons holding such licences, see *Shoolbred v. St. Pancras JJ.* (1890), 24 Q. B. D. 346; 25 Digest 389, 401; where a game dealer's licence was refused to the proprietor of a large general store who held a beer dealer's retail licence.

(f) 2 & 3 Vict. c. 35, was repealed by the Revenue Act, 1869, but the provisions of s. 4 are considered to be still applicable, so far as is consistent with the transfer of functions to county borough, borough and district councils (vide *infra*), as s. 13 of the Game Licences Act, 1860 (8 Statutes 1089), is still in force.

By sect. 27 of L.G.A., 1894 (g), the powers of the justices in petty sessions as to the licensing of dealers in game were transferred to the councils of county districts, and, by sect. 32, the county borough council became the licensing authority in a county borough.

By sect. 27 (3) all fees payable in respect of these licences became payable to the appropriate council, and as no fee for a licence seems to have been prescribed by the Game Act, 1831, the fee payable to the council for a licence would be the fee fixed by the table of fees to justices' clerks in force in the locality in November, 1894. But all such tables were superseded by sect. 6 of the Criminal Justice Administration Act, 1914 (h), and the First Schedule to that Act prescribes a fee of 5s. to the justices for every licence, consent, or authority, not otherwise provided for, to include registration when necessary. As this substitution has effect notwithstanding any provisions in any other general or local Act, it would probably be held that sect. 6 of the Act of 1914 has had the result of fixing a uniform fee of 5s. as payable to a borough or district council on the grant of a licence.

The licence formerly granted by the justices under the Game Act, 1831, must be obtained before an excise licence to deal in game can be granted (i). A licence under the Act of 1831 is not required for dealing in game imported into the United Kingdom (k), but an excise licence must be obtained by a person dealing in imported game (l).

A game dealer's licence is personal and cannot be transferred; *semble*, on the death of a holder of a licence to deal in game, application for a new licence should be made by the person carrying on the business. Persons trading in partnership and carrying on business at one house, shop or stall only, need not take out more than one licence (m). There appears to be no appeal against a refusal to grant a licence to deal in game (n). The licence of the council to deal in game must specify the house, shop or stall at which game is to be sold, and the licensed person must keep affixed on the outside of the front of the house, shop or stall a board stating his Christian name and surname, and bearing the words: "Licensed to deal in game" (o). [320]

Servants of a licensed dealer may buy and sell game on his behalf (p).

Offences against Game Act, 1831.—Sects. 4 and 28 of the Game Act, 1831 (q), create certain offences which are punishable on summary conviction.

Conviction for an offence against the Game Act, 1831, renders null and void a licence to deal in game held by the convicted person (r), but a convicted person might apply for a fresh licence though he might not be successful. [321]

(g) 10 Statutes 797.

(h) 11 Statutes 374.

(i) See s. 15 of Game Licences Act, 1860; 8 Statutes 1090.

(k) *Guyer v. R.* (1889), 23 Q. B. D. 100; 25 Digest 390, 404.

(l) Customs and Inland Revenue Act, 1893, s. 2; 8 Statutes 1100.

(m) Act of 1831, s. 21; 8 Statutes 1074.

(n) Cf. *R. v. Bird* (1898), 62 J. P. 309 (25 Digest 389, 402), where an application for a *mandamus* against the Kensington J.J. to hear and determine an application for a game dealer's licence was refused on the ground that the J.J. were acting in an administrative capacity and had exercised their discretion.

(o) Act of 1831, s. 18; 8 Statutes 1074.

(p) Game Act, 1831, s. 29; 8 Statutes 1076.

(q) 8 Statutes 1067, 1076.

(r) Act of 1831, s. 22; 8 Statutes 1074.

London.—Game-dealers' licences under the Game Act, 1831, are, in London, granted by the justices since the L.G.A., 1894, sect. 27, which transferred these duties in the provinces to the district councils, does not apply to London. Licences to kill game under the Game Licences Act, 1860, are issued by the L.C.C. [322]

GAME LICENCES

See LOCAL TAXATION LICENCES.

GAMES, PROVISION FOR

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See also titles :

ACCIDENTS ;
 BETTING ;
 COMMONS ;
 EDUCATION SPECIAL SERVICES ;
 NEGLIGENCE ;

OPEN SPACES ;
 PUBLIC PARKS ;
 RATING OF SPECIAL PROPERTIES ;
 VILLAGE GREENS.

Introduction.—In medieval times the State was only interested in securing that time and energy, that might be spent in martial pursuits, should not be devoted to games. The earliest statutory reference to games seems to occur in the Statute of Labourers of 1388 (*a*), requiring that "such servants and labourers shall have bows and arrows and use the same on Sundays and holidays, and leave off all plays of tennis or football, and other games called coits, dice, casting of the stone, nails (nine-pins), and other such games." These are referred to as "unlawful games" in an Act of 1409 (*b*), and playing at them might lead to six days' imprisonment. In 1477 (*c*), games called closshe, keyles, half-bowl, hand-in and hand-out and quekeboard were added to the list and it was enacted that no person should allow any such games in their house, garden, etc., on pain of three years' imprisonment and forfeiture of £20, and that none should play at the games on pain of two years' imprisonment and forfeiture of £10. In the reign of Henry VIII., an Act was passed "for the maintenance of artillery and debarring unlawful games" (*d*) which then included tennis and bowls. The

(*a*) 12 Richard 2, ch. 4. Repealed.

(*b*) 11 Hen. 4, ch. 14. Repealed.

(*c*) 17 Ed. 4, ch. 3. Repealed.

(*d*) 33 Hen. 8, ch. 9 ; 8 Statutes 1107—1110. Repealed as to games of skill such as bowling, tennis, etc., by the Gaming Act, 1845.

Unlawful Games Act, 1728 (*e*), dealt among other matters with "the more effectual debarring of unlawful games" and heavier penalties were imposed. Unlawful games had by that time become linked with the prevention of betting and gaming. The playing of games on village greens and commons came, however, before the courts in various cases to be mentioned later. During the last few decades the change has been so great that almost every town has made provision for land set aside for public enjoyment and recreation, and the fact that this is becoming increasingly realised by local authorities is pointed out in the latest Report of the Ministry of Health (*ee*). Loans sanctioned by the department for open spaces generally in 1884-85 reached approximately £80,000, while in 1934-35 it was £2,305,000. Interesting items during the year include the purchase of 145 acres of land at Timperley for £38,650 by the Altrincham Urban District Council, which included the Timperley Golf Course and the ground of the Timperley Cricket Club, while the largest acquisition was the North Foreland Estate of 263 acres for £60,000 by the Broadstairs and St. Peters Urban District Council, which included the North Foreland Golf Course. Southampton County Borough Council, on the other hand, has, out of revenue, paid for 280 acres for a civic sports centre. Other additions for the playing of games have been: (a) lands already held by local authorities for other purposes which have been appropriated with the Minister's sanction for sports grounds; (b) gifts of land to local authorities or the National Playing Fields Association; and (c) acquisition under local acts. [323]

Village Greens and Commons.—Rights of playing games on village greens arise from custom, and therefore must be shown to have existed from "time immemorial" (*f*). It is of the very nature of a village green that it should be used for recreation. A custom to dance was held good in 1665 (*g*), and the playing of cricket on a certain piece of ground at Steeple Bumpstead in Essex was supported in 1795 (*h*). A right must, however, exist for all the inhabitants of a parish (*i*), and not for the public in general (*j*), nor "for all persons for the time being in the said parish" (*k*). The custom may be for any kind of game and not only for those that existed before 1189, but the user must be reasonable (*l*). In *Hall v. Nottingham* (*m*) a custom was held good for the inhabitants of a parish to enter upon certain lands in the parish and erect a maypole and dance round it and enjoy other recreation, at any time of the year. [324]

By sect. 8 (1) (d) of the L.G.A., 1894 (*n*), bye-laws for the regulation of a village green may be made by the parish council, subject to confirmation by the M. of H., if the green is under the control of the council, or if they have contributed to the expense of it. A village green could be allotted to the overseers under sect. 15 of the Inclosure Act, 1845 (*o*),

(*e*) 2 Geo. 2, c. 28, s. 9; 8 Statutes 1118. This section only of the Act remains unrepealed.

(*ee*) Sixteenth Annual Report, 1934-35, pp. 40-42.

(*f*) That is, the year 1189. See title VILLAGE GREENS.

(*g*) *Abbot v. Weekly* (1665), 1 Lev. 176; 17 Digest 17, 160.

(*h*) *Fitch v. Rawling* (1795), 2 Hy. Bl. 393; 17 Digest 17, 162.

(*i*) *Bourke v. Davis* (1889), 44 Ch. D. 110; 17 Digest 17, 164.

(*k*) *Edward v. Jenkins*, [1896] 1 Ch. 308; 17 Digest 16, 150.

(*l*) *Mercer v. Denne*, [1904] 2 Ch. 534; 17 Digest 6, 22.

(*m*) (1875), 1 Ex. D. 1; 17 Digest 4, 8.

(*n*) 10 Statutes 780.

(*o*) 2 Statutes 447.

as a place for exercise and recreation, or a recreation ground may have been allotted to the overseers under sect. 30 of that Act (*p*). Either kind of allotment was transferred to the parish council by sects. 5 (2), 6 (1) (c) (iii.) of L.G.A., 1894 (*q*). [325]

In the same way, a custom of playing games may exist on many commons, and many old corporations have large tracts of land over which they may have obtained rights of recreation for their inhabitants. On many commons, where rights of common are still exercised, any such games must be played subject to such rights. An example may be seen in Bungay, in Suffolk, where on a common of 400 acres, still subject to right of pasturage, the town has laid out a golf course, cricket and football pitches, and horse-racing has been held at least twice a year for the last 150 years. In a case concerning Stockbridge Common (*r*) the right of the inhabitants to use a common for recreation, in the same way and for the same purposes as a village green is usually enjoyed by the villagers, was upheld, and in the judgment the right of resort for picnics was specially mentioned. In the *Barnes Common Case* (*s*) it was held that the right to play games carried with it the right to erect tents and other necessary accessories to the game, and about 3½ acres were shown to be an old village green over which the inhabitants enjoyed rights of recreation, including cricket. It was decided in this case that a permanent fence round the cricket pitch might be made, but it was subject to the commoners' right of access at suitable times. By sect. 7 (3) of the Commons Act, 1876 (*t*), and sect. 1 of the Commons Act, 1899 (*u*), the conservators of a common, whether the local authority or not, have the power to set aside, in a scheme for its regulation, specified portions for games, and they may enclose these temporarily. Regulations made by conservators under a bye-law giving a preference to members of a golf club by whom golf courses had been laid out on a common with the consent of the conservators have been held invalid though a regulation requiring a caddie to be employed was upheld in *Mitcham Common Conservators v. Cox* (*a*); see also *Harris v. Harrison* (*b*). [326]

Powers of Local Authorities.—Sect. 164 of the P.H.A., 1875 (*c*), permits councils of county boroughs, boroughs or districts to purchase or take on lease lands for public walks and pleasure grounds, to support or contribute to the support of public walks or pleasure grounds provided by any person, and to make bye-laws, subject to confirmation by the M. of H., for their control. These powers were extended to parish councils by the L.G.A., 1894 (*d*), as respects any recreation ground, village green, open space or public walk, for the time being under the control of the council, or to the expense of which they had contributed. Nothing, however, was said of any right to use these places for games. By sect. 11 (2) of the Open Spaces Act, 1906 (*e*),

(*p*) 2 Statutes 452.

(*q*) 10 Statutes 777, 778.

(*r*) *Lancashire v. Hunt* (1894), 10 T. L. R. 310, 448.

(*s*) *Ratcliff v. Jowers* (1891), 8 T. L. R. 6; 11 Digest 90, 1087.

(*t*) 2 Statutes 583.

(*u*) *Ibid.*, 607.

(*a*) [1911] 2 K. B. 854; 11 Digest 88, 1078, 1079.

(*b*) (1914), 111 L. T. 534; 11 Digest 89, 1080.

(*c*) 13 Statutes 693. Extended to rural district councils by the Rural District Councils (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580), see 24 Statutes 262.

(*d*) S. 8 (1) (d); 10 Statutes 780.

(*e*) 12 Statutes 387. See title OPEN SPACES.

the playing of any games or sports is not to be allowed in any burial ground over which a local authority have acquired any estate, interest or control, unless sanctioned by the bishop by licence or faculty in the case of a consecrated burial ground, or by the persons from whom the estate, interest or control was acquired as regards an unconsecrated ground. In *Bermondsey Borough Council v. Mortimer* (f) in granting a faculty the Chancellor said, "I think a case has been made for permitting games to be played subject to stringent restrictions. Organised games, such as cricket or football ought not to be allowed, nor should there be any permission to erect structures such as swings or to lay out tennis courts or the like. Further, the adjoining householders . . . should be protected against nuisance from undue noise or otherwise . . ." In some licences, however, permission is given for swings and other structures for the amusement of small children. [327]

Sect. 76 of the P.H.As. Amendment Act, 1907 (g), where put in force by order of the M. of H., gives a county borough, borough or district council power to deal with games. Subject to any restrictions or conditions prescribed in rules made by the M. of H. (h), the council, in respect to any public park or pleasure ground provided by them or under their management or control, may set apart any part of it for the purpose of cricket, football or any other game or recreation, and exclude the public from the part set apart while in actual use for that purpose (i). The part in question must be described in a notice board affixed or set up in some conspicuous position in the park or ground. The council may also (k) provide apparatus for games and recreation and charge a fee for the use of it, or let the right of providing the apparatus for any term of years not exceeding three to any person. By sect. 56 (5) of the P.H.A., 1925 (l), when any part of a park or ground has been set apart for purposes of cricket, football or other game, the council may charge reasonable sums for the use of it. [328]

By sect. 77 of the Act of 1907 (m), which is generally put in force when sect. 76 is put in force, the council may appoint officers for securing the observance of sect. 76 and of the regulations and bye-laws made thereunder, and these officers may be sworn in as constables, for that purpose, but they may not act as constables unless in uniform or provided with a warrant. By sect. 82 of the Act (n), in order to prevent danger, obstruction or annoyance to persons using the seashore, the borough or district council may make and enforce bye-laws to regulate among other matters the playing of games on the seashore, and regulate its user. [329]

The acquisition of playing fields is authorised by sect. 69 of the P.H.A., 1925 (o), which permits any county council, county borough council, borough or district council or parish council to acquire by purchase, gift or lease, lands which are not part of a common, for the purposes of cricket, football or other games and recreation. They may lay them out, equip and maintain them, and may either manage them

(f) [1926] P. 87; Digest (Supp.).

(g) 13 Statutes 938.

(h) No such rules have been made by the Minister.

(i) S. 76 (1) (b); 13 Statutes 938.

(k) S. 76 (1) (c).

(l) 13 Statutes 1140. In force wherever s. 76 of the Act of 1907 is in force, see s. 56 (6) of the Act of 1925.

(m) 13 Statutes 939.

(n) *Ibid.*, 941. Where put in force by an order of the Home Secretary.

(o) 13 Statutes 1146.

themselves and charge for their use, or for admission, or may let them or any portion of them to any club or person for any such use. In this section "common" includes any town or village green (*p*). By subsect. (2) of the section, a council may contribute towards the expenses incurred under the section by any other council or authority. Land for these purposes may be purchased compulsorily if a provisional order of the M. of H. under sects. 159, 160 of L.G.A., 1933 (*q*), is obtained.

[330]

A gift of land for a public park, recreation ground or playing fields may be accepted by any of the councils already mentioned, under sect. 268 of L.G.A., 1933 (*r*). It is under this section that playgrounds and playing fields are now placed under the care of local authorities by the National Playing Fields Association and other Trusts as mentioned later. [331]

Mention should be made here of the great increase of the number of municipal golf courses. At the opening, for instance, of one of the golf courses in Birmingham (*s*), it was said that the provision of golf courses had proved a paying proposition, as in the five years 1928-1932, the receipts from it realised over £34,000, and the expenditure, including loan charges, during the same period was £31,666. At the same time the Lord Mayor emphasised that "the Municipality to-day is determined that the advantages of the game should be open to the poorest of the people." The necessity of setting apart playgrounds solely for the use of young children has been appreciated, and many areas are set aside for sand-pits, joy-wheels and swings. Some towns have facilities for fishing in the ponds in their parks, other have rifle ranges. There is an increase in the number of pitches devoted to net-ball, Southend having 18, and Brighton providing for both this and stool-ball, while in some instances there are facilities for lacrosse. Several towns find it possible to combine the sanitary dumping of rubbish with the creation of level grounds for games. At Southport, for example (*t*), a recreation ground of 22 acres has just been made from a low-lying area formerly liable to floods. In 1925-27 the level was raised 5 feet by controlled tipping, and the site will be laid out as a central sports ground for cricket and football.

[332]

Problems that arise are concerned with whether games should be allowed on Sunday, the provision of organised games under supervision, the fees to be charged and the relative space to be left for the playing of organised games, the unorganised frolics of smaller children, the provision of bowling greens and golf courses for older people, and the quiet enjoyment of open air and beauty on the part of those who merely wish to use the parks and recreation grounds for that purpose. Where, of course, the land is a gift from private individuals, or from the National Playing Fields Association or the Carnegie Trust the land must be used strictly in accordance with their wishes. The provision by local education authorities of play centres, holiday camps, sports, games and playing fields is dealt with in the title EDUCATION SPECIAL SERVICES. [333]

Special reference should be made here to the 5th Report of the National Council for Juvenile Unemployment as regards the question of games in the junior instruction centres set up under sect. 13 of the

(*p*) S. 69 (5).

(*q*) 26 Statutes 392, 393.

(*r*) *Ibid.*, 449. See title GIFTS OF LAND AND OTHER PROPERTY, *post*.

(*s*) See "Municipal Review," Vol. IV., p. 279.

(*t*) *Ibid.*, Vol. V., p. 130, April, 1934.

Unemployment Act, 1934 (u). In the recommendations of the council as to a suitable curriculum, it is suggested that "the importance of physical training and organised games, as an instrument for the creation of alertness, initiative and energy, should not be overlooked. . . . A word of warning is, however, necessary in this connection. While the conception underlying the centre embraces, in a sense, the idea of a club, the boys and girls who are there enrolled must be made to realise that it is not established entirely for their recreation and amusement. According to present practice, attendance at the centre is in many districts limited to 18 hours a week only; the provisions made for recreation should not unduly encroach on this time. Where and when possible an attempt should be made to play organised games outside this time. When games form part of the organisation of the centre, one of their objects should be the inculcation of a 'team spirit.' A room fitted with gymnastic apparatus is useful to a centre. Some talks on elementary anatomy, personal hygiene and diet may be usefully included in the time devoted to physical training." [334]

Responsibilities of Local Authorities.—Apart from the provision of facilities for games, the question arises as to the responsibility of the local authorities in regard to the management and control of the playgrounds and equipment. The general subject of negligence is dealt with in the title NEGLIGENCE. Extra care is necessary in the case of children. There have been several cases decided in the courts in regard to accidents when games are being played (a). The law as regards recreation grounds was lately summed up in *Purkis v. Walthamstow Borough Council* (b), where a boy of twelve years of age fell off a swing owing to giddiness, the apparatus being in good order and an attendant being present. It was held that there was no breach of duty or want of exercise of reasonable care on the part of the council, the effective cause being that the boy became sick and faint and was not able to hold on. SCRUTTON, L.J. said, "Such an authority is not liable for the consequences of dangers which are obvious to children, who are mere licensees, but it is liable for a 'trap' or defective or dangerous premises or playthings. If an authority has provided unobjectionable structures or implements for play, it is under no liability to supervise their use, still less to ascertain that each child using them is physically fit to do so without accident. . . . It is not easy to decide in the case of a local authority providing a recreation ground whether it licenses or invites. It has a power, but not a duty, to provide, and may regulate by attendants and bye-laws. The cases appear to show that the authority is not liable for the consequences of dangers obvious to children—not liable if a child even, of four and a half, tumbles into either natural or artificial water (c). The authority is liable if it provides 'traps' accessible to children, such as shrubs with attractive but poisonous berries. It would be liable for defective or dangerous premises or implements of play—but not to supervise their employment, still less to ascertain that each child using them is physically fit to stand a swinging or revolving motion. It is not a case of a local authority doing something

(u) 27 Statutes 768.

(a) As to the liability of local education authorities for accidents, see title ACCIDENTS, Vol. I., pp. 16—21.

(b) (1934), 98 J. P. 244; Digest (Supp.).

(c) *Hastie v. Edinburgh Magistrates* (1907), 44 Sc. L. R. 829; 36 Digest 70, 450 v.; and *Stevenson v. Glasgow Corpn.* (1908), 45 Sc. L. R. 860; 36 Digest 52, g.

and doing it badly, for the local authority do not work the swings or roundabouts. . . . In *Gow v. Glasgow Education Authority* (d) the Scottish Courts negatived the view that the authorities of a blind school were bound to protect the pupils from each other's frolics." The matter has been of much concern to the National Playing Fields Association and the Carnegie Trustees, and they have made arrangements by which the owners or managers of playing fields may take out a policy against Third Party Risks (e). The rate of premium chargeable is approximately 2s. 6d. per 100 children using the ground, with a minimum of 30s. per ground. The policy covers the council against all claims made during the year for which the premium is paid, the maximum amount of the insurance being £500 in respect of any one claim. Indemnity against general liability to the public, as apart from children, in respect of any recreation ground can also be arranged. The Miners' Welfare Committee have entered into an arrangement with a firm of Lloyds' underwriters for the issue of a similar comprehensive policy. [335]

Streets as Playgrounds.—The use of the street for games, while always prevalent, has at all times been deprecated—at first as an obstruction to other users, and later because of the danger to the children themselves. By sect. 72 of the Highway Act, 1835 (f), any person who plays at football or any other game on any part of a highway, to the annoyance of a passenger, is liable to a fine of 40s. In *Pappin v. Maynard* (g), it was held that a mock stag hunt was included in the words "any other game." In *Woolley v. Corbishley* (h) it was decided that it was unnecessary to bring evidence of annoyance, when hundreds of persons playing a game of football rushed through a town. It was contended that everyone, even the constable, was delighted to join the game, but the magistrates convicted. Sect. 28 of the Town Police Clauses Act, 1847 (i), imposing the penalty of 40s. for committing an offence in any street to the obstruction, annoyance or danger of the residents or passengers, covers any person who flies a kite or who makes or uses any slide upon ice or snow. As to the duty of highway authorities towards children playing in the streets, a case was tried in Edinburgh (k), where a child of six playing in the streets was warned of danger by a policeman, but returned two hours later and fell backwards through a gap in a fence where a road was being mended. The council were held liable, in spite of the warning, as there was a breach of the duty to fence or guard the gap. But where a child of seven climbed on a stationary van, which was left unattended on the highway, and slipped off, it was held (l) that an object left unattended, though an allurement to children, must possess some attribute which made

(d) [1922] S. C. 260; 36 Digest 21, e. See also *Giles v. L.C.C.* (1903), 68 J. P. 10; 36 Digest 93, 616, where there was no negligence where a youth was hurt by a temporary indicator on a spike beside a cricket pitch which constituted an open and obvious danger and could easily have been removed.

(e) See the Leaflet issued by the Association—"Playground Accidents: Insuring against Third Party risks."

(f) 9 Statutes 88.

(g) (1863), 9 L. T. 327; 26 Digest 422, 1410.

(h) (1860), 24 J. P. 773; 26 Digest 422, 1409.

(i) 19 Statutes 38. In force in boroughs and urban districts by virtue of s. 171 of P.H.A., 1875; 18 Statutes 696.

(k) *Stevenson v. Edinburgh Corpn.*, [1934] S. C. 264.

(l) *Donovan v. Union Cartage Co.*, [1933] 2 K. B. 71; Digest (Supp.).

it dangerous, to render the owner liable in damages. Even if the van were an obstruction on the highway and so a nuisance, the accident did not happen from that cause, but because the child had climbed on the van, and therefore there was no liability for nuisance.

[336]

The subject of making little-used streets safe at certain times for children to play by closing them for vehicular traffic has become an increasing object of interest to the highway and police authorities. In 1930, the Belfast Corporation obtained power by local Act (*m*) to close streets to enable them to be used as playgrounds for children. In 1933, the Salford corporation followed suit, and may now (*n*) by order close to vehicular traffic any street in the city, not a classified road, for a specified period on each day, or on certain days, for the purpose of enabling the street to be used as a playground for children. Streets belonging to the Manchester Ship Canal Co. and streets not repairable by the inhabitants at large were excepted. The order must indicate the hours and days of closure, and is to continue in force for a specified period unless revoked; all vehicular traffic or only a specified class or classes may be included; and exceptions may be made as to occasional user. The council may make bye-laws as to the admission of children to a street thus closed and for ensuring their safety, and for good and orderly management. They may place temporary barriers in and near the street for the stated hours to prevent vehicular traffic or horses from entrance, and may employ and pay persons to perform any of those duties if necessary. In 1934, Manchester obtained similar powers (*o*) and the subject is under discussion in regard to London and the Home Counties between the London and Home Counties Traffic Advisory Committee and the Metropolitan Police. [337]

The National Trust.—By sect. 29 of the National Trust Act, 1907 (*p*), the Trust (*q*) may set apart from time to time parts of their property upon which persons may play games or hold meetings or gatherings for athletic sports, and by sect. 32 (5) they may make bye-laws for regulating games. In many cases the property itself is unsuitable for games, as it is heavily wooded or hilly ground, but otherwise where the land is definitely given to the Trust subject to the provision of games, or where there is a demand for games, the Trust has endeavoured to arrange for space for games, and these are regulated by the local committee who manage the Trust property in the neighbourhood. Bye-laws published in 1927 forbid a person to play or take part in any game which may cause hurt or inconvenience to persons using the Trust lands and not engaged in such game, except in parts set apart for the purpose by notice exhibited on the land; and when any part has been so set apart no person must play or take part in any game thereon without due regard to the safety of the public. By another bye-law, where such notices have been exhibited, no person may drive or ride among or to the danger or annoyance of persons assembled for the game, no one may by riding or using any vehicle spoil the turf set apart for cricket-pitches, golf-greens, or for other games played on turf, and no one may resort to, assemble with other persons on, or attempt to

(*m*) Belfast Corpn. Act, 1930 (c. ii.), s. 59.

(*n*) Salford Corpn. Act, 1933 (c. lxxxix.), s. 137.

(*o*) Manchester Corpn. Act, 1934 (c. xevii.), s. 55.

(*p*) 7 Ed. 7, c. cxxxvi.

(*q*) Their address is 7 Buckingham Palace Gardens, S.W.1.

occupy any part set aside for games, or interfere with or cause annoyance to any persons already enjoying the ground and using it for the purposes for which it was set apart. [338]

The National Playing Fields Association (*r*).—It is now seven years since the National Playing Fields Association was formed under the Presidency of H.R.H. the Duke of York. Since its formation, 1,200 playing fields and recreation grounds have been given to or purchased by the Association. The area secured covers at least 10,000 acres and provides accommodation for over 1½ million of players. Other grounds have been given to or acquired by local authorities who have been inspired to activity by the policy of the Association. The standard of the Association is 4 acres of playing field for each 1,000 of population, and while the area within the radius of 10 miles of Charing Cross with a population of about seven millions, should have about 36,000 acres of playing fields, 50 per cent. only of that acreage is available, while the land actually available for the playing of games is not 25 per cent. of what is required. What is true of London equally applies to practically every large city in the Kingdom, and investigations of the Association have shown that in rural areas the number of parishes possessing a public recreation ground varies in different counties from one in ten to one in forty-four.

The Association, in conjunction with the Carnegie Trustees, has made grants in aid of the acquisition and laying out of playing fields and children's play centres aggregating £243,434 in aid of 669 schemes, and owns fifty-four playing fields which are either administered on its behalf by the local authority concerned or by a body of managers. There are fifty-four county and city branches and numerous local committees in the provinces. As already mentioned bye-laws can be made by any council in respect of any playing field under their control. The Association, or bodies of private trustees in whom are vested playing fields under the Recreation Grounds Act, 1859 (*s*), have also power to make and enforce bye-laws. The liability of managers of recreation grounds for accidents has been already dealt with (*t*). The Association emphatically urges owners or managers of playing fields to take out a policy of insurance to cover their legal liabilities in regard to any claim made upon them by third parties in respect of personal injury or other damage to clothes or property, as described in their leaflet mentioned earlier. [339]

Rating of Playing Fields.—In November, 1930, the Central Valuation Committee issued a Report (*u*), on the Valuation of Playing Fields for Rating Purposes for the guidance of Rating and Valuation Authorities (see title RATING OF SPECIAL PROPERTIES). [340]

London.—The powers are for the most part contained in the various L.C.C. (General Powers) Acts mentioned later. Under sects. 18, 19 of the L.C.C. (General Powers) Act, 1925 (*a*), the L.C.C. may acquire, lay out and equip lands, within or without the county, for purposes of sports, games or recreation, and may let all or any lands so acquired

(*r*) Address, 71 Eccleston Square, London, S.W.1.

(*s*) 12 Statutes 369.

(*t*) *Ante*, p. 157, and see title ACCIDENTS.

(*u*) Memo. 155 R.V.

(*a*) 11 Statutes 1372.

to any person or to any athletic club or other organisation for the benefit and interests of persons working or residing in the county.

The council may also on any lands so acquired provide and maintain, or allow rifle clubs and other associations of a similar character to provide and maintain, rifle ranges ; may provide and maintain grounds, lawns, courts or greens for any sport, game or recreation, and may provide and maintain swimming baths or pools with the necessary dressing accommodation, etc. (sects. 20, 21).

The L.C.C. (General Powers) Act, 1935, Part V., replaces a number of provisions with regard to facilities for recreation in open spaces and disused burial grounds. Under these powers the L.C.C. and any metropolitan borough council may provide and maintain open air swimming baths, places for dancing, golf courses, places for games and sports, gymnasia, rifle ranges, boats, and facilities for skating in time of frost (including the flooding of part of an open space) ; and may provide refreshments, swings, chairs, lockers, towels, costumes, and other equipment or apparatus, and various buildings and structures ; and may enclose any portion of an open space for these purposes. Charges may be made for these facilities, and licences may be granted for the exercise of the powers by other persons. Provision is made for bye-laws, and for agreements between the local authorities. [341]

GAMING HOUSES

See DISORDERLY HOUSES.

GANGMASTERS

See AGRICULTURAL GANGS.

GARDEN CITIES

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Introductory.—The term “garden city” has not yet been the subject of precise legal definition, and an attempt to gather such a definition from these two words in their ordinary legal significance would give a false impression. In fact a Departmental Committee on Garden Cities and Satellite Towns expressed a doubt in their report (*a*) whether the expression retained at the present time any definite sense. A garden city does not consist exclusively of gardens, because it essentially includes both residential and factory development, nor is it a “city” in the technical sense. A resolution adopted by the council of the Garden Cities and Town Planning Association in 1920 defined a garden city as “a town designed for healthy living and industry; of a size that makes possible a full measure of social life (but not larger), surrounded by a rural belt; the whole of the land being in public ownership or held in trust for the community.” The Memorandum of Association of Welwyn Garden City, Ltd., described it as “a complete town with industries, public services, dwellings and social amenities, surrounded by a permanent rural belt.” The Editor of “Town and Country Planning” described it (*b*) as “a new town, built in the country at some distance from large overgrown cities, enjoying the amenities of the country and the town simultaneously, and combining the industries and amenities of urban and rural areas.”

This difficulty of definition is not unexpected, because essentially the term “garden city” connotes an idea or a movement, and any definition must be based on the particular examples in which the idea has been translated into practice. As the departmental committee above referred to pointed out, many of the principles of the pioneers of the movement had received general acceptance with the result that examples of the practical application of them might be sought in most examples of town planning proposals. The committee found themselves

(*a*) No. 32—311. Dated December 22, 1934. Published by H.M. Stationery Office, price 6*d*.

(*b*) In an article printed in Hill's Complete Law of Town and Country Planning (1933).

unable to deal with garden cities except as an aspect of national planning. For the purposes of this article, perhaps the best definition, or rather description, of a garden city, is that contained in the Memorandum of Association of First Garden City, Ltd., "the distribution of the industrial population upon the land upon the lines suggested in Mr. Ebenezer Howard's book entitled 'Garden Cities of To-morrow' (published by Swan, Sonnenschein & Co., Ltd., in 1902), and to form a Garden City (that is to say) a Town or Settlement for agricultural, commercial and residential purposes, or any of them, in accordance with Mr. Howard's scheme or any modification thereof."

English garden cities have sprung from the ideas expressed in Mr. Howard's book. This book was originally published under another title in 1898, and the work of 1902, which was the third edition, immediately preceded the formation of a company in the same year to build a garden city in accordance with its ideals. In view of this close connection between the ideals of the book and the objects of the company of which Mr. Howard was a director, and the fact that the company translated their ideals into practice, the views and descriptions in the book may be taken as authoritative. [342]

Essential Elements of the Conception of a Garden City.—(1) It is a complete town. There are also what are called "satellite towns," or "garden suburbs," or "garden villages," each of which possesses certain features of the garden city. In fact, there have been few large housing schemes since 1918 which do not possess some such features; but the garden city proper is intended to be complete in itself with "industries, public services, dwellings and social amenities." In ideal circumstances it would possess a full civic and social life of its own, be commercially self-supporting, and employ its own population. [343]

(2) It is to be built on land in a single ownership. This ownership is to be that of a company who hold on behalf of the community. It is recognised that a satisfactorily planned development of an estate is most probable where there is a single owner and the needs of the community can be considered as a whole. Proper and planned consideration can thus be given to design, to the provision of roads and services and to the preservation of amenities, all of which may be ignored on a haphazard development. It is not intended, however, that the estate should be developed for the profit of a private owner, and therefore the single ownership must be that of the community of settlers. [344]

(3) It is to be planned. Provision is to be made for healthy living and for industry, which means that healthy living is to be provided for every one, including the industrial population. The features of every locality will not be the same, but the town must be planned to give these two advantages. [345]

(4) It is to be large enough to make possible the enjoyment of the social and other advantages which towns can provide, and not larger. The original garden city at Letchworth was contemplated as having an eventual population of 32,000. [346]

(5) It is to be surrounded by a permanent rural belt. This and the fact that each of the houses, schools, factories and other buildings to be built in, and is to possess, an area of garden space, are the factors designed to give to the urban community the enjoyment of the advantages of both town and country. In Welwyn Garden City only

one-fifth of the land is built on. The situation of the belt is to be planned, like everything else, to secure the general amenities. [346A]

(6) The "large anticipated increase in the value" of an agricultural estate caused by its conversion from country to town, is to be retained for and by the community.

The method by which this last idea has been carried out at Letchworth and Welwyn, has been by the use of two pieces of English legal machinery, (1) the joint stock company, and (2) a system of leasehold tenure. In each of the garden cities hitherto begun, a company has first been formed to acquire the freehold of the whole estate, and to town-plan and develop it. The company undertakes the provision of public services, but does not build. By the articles of association, the dividend on the share capital is limited to 4 or 5 per cent., and the surplus income derived from the estate is to be applied to its development or benefit. There is, therefore, no profit-making out of the conversion so far as income goes. The retention of any increase in capital value is ensured by the company retaining the freehold, the tenure of land being leasehold. This also ensures to the company a control over development, which might not be possible if it parted with the freehold, even if carefully framed restrictive covenants were imposed. At Letchworth the leases are for terms of 990 years for factory sites, 99 years for shops, and either 99 years or 990 years for residential sites. Where the terms are for 990 years, the rent is to be revised every 99 years, and the principle of revision of rent is to be the then annual value of the land exclusive of buildings; no account is to be taken of buildings or improvements by the lessee. In Welwyn terms are for 999 years. [347]

The policy of owning the fee simple of land as a garden city has recently been supported by the Departmental Committee on Garden Cities and Satellite Towns on pp. 20, 21 of their Report (c). In their opinion it enables the most complete and favourable utilisation to be made of every part of the area, and enables development to be controlled in the best interests of the area as a whole. Difficult elements of compensation are thus avoided, which are bound to be involved if limitations are placed, whether by a planning scheme or otherwise, upon the user of individual sites in private ownership. It also, in the committee's opinion, avoids the difficulty that there may be no immediate demand for land for the purpose for which it ought to be allocated in the interests of sound planning, for, if the whole of the land were owned by the local authority, there would be no difficulty in holding land which is specially suited for a particular purpose until it is required for that purpose. [348]

Town and Country Planning Act, 1932.—Sect. 35 of the Town and Country Planning Act, 1932 (d), contains provisions relating to garden cities. These provisions are repeated from the 1925 Act, and are an extension of provisions originally made in sect. 7 of the Housing Act, 1921. They are designed to encourage and assist the growth of garden cities on the lines previously indicated, and for this purpose are directed mainly to assisting in (1) the acquisition of land for development as a garden city, and (2) the making of adequate financial arrangements for its development.

(c) No. 32—311. Published by H.M. Stationery Office, Kingsway, W.C.2, price 6d.

(d) 25 Statutes 506.

The section contemplates that promotion of a garden city may be undertaken by (1) a local authority, which by sub-sect. (7) includes a county council, (2) two or more local authorities jointly, or (3) an authorised association. This last phrase is defined as meaning any society, company or body of persons approved by the M. of H., whose objects include the promotion, formation or management of garden cities, and the erection, improvement or management of buildings for the working classes and others, and which does not trade for profit or whose constitution forbids the issue of any share or loan capital with interest or dividend exceeding the rate for the time being fixed by the Treasury (e). The last provision is designed to secure the sixth essential of a garden city, that the undertaking is to be one for the general benefit of the community and not a commercial speculation, and the Minister may withhold approval if the association is one in which the principle of limitation of dividends is not applied.

At the same time it is not desired to encourage philanthropic schemes which have not the necessary financial backing to effect their objects. The Minister is to be satisfied, before he puts any scheme in motion, that the association who propose to invoke the powers of the Act not only are prepared to purchase land and develop it as a garden city, but also have funds available for the purpose (f). The Minister is made mainly responsible for the operation of the section. [349]

Acquisition of Land.—Where the Minister is satisfied that one of the three before-mentioned types of body are prepared to purchase any land and develop it as a garden city, and that they have funds available for the purpose, he may acquire the land on their behalf, either by agreement or compulsorily. Before doing so, he must consult the President of the Board of Trade, the Minister of Agriculture and Fisheries, and the Minister of Transport, to ascertain whether the scheme proposed is desirable from the point of view of their respective departments, and must also obtain the consent of the Treasury. Having obtained the land, he may do all such things as may be necessary to vest the land so acquired in the local authority or association (f).

If the body proposing to develop the garden city are a local authority, they may themselves acquire the land (g), and this either (i.) by agreement (h), or (ii.) compulsorily where they consider it to be necessary or expedient to do so to secure the development of the land in accordance with the scheme proposed. Where a compulsory acquisition is necessary, sect. 25 of the Act (i) is applied by sect. 35 (3), and the council are subject to the same conditions as apply to a planning authority acquiring land under sect. 25. A compulsory purchase order must, therefore, be made by the council and submitted to the Minister for confirmation. It must be in the prescribed form (k), and must describe by reference to a map the land to which it applies, and must incorporate, subject to certain modifications set out in para. 3 of

(e) Town and Country Planning Act, 1932, s. 35 (7) ; 25 Statutes 507.

(f) *Ibid.*, s. 35 (1).

(g) *Ibid.*, s. 35 (3).

(h) If the acquiring body is a company, it will acquire under the powers contained in its Memorandum of Association. The L.G.A., 1933, does not affect the provisions as to land of the Town and Country Planning Act, 1932 (see sect. 179 (g) of and Seventh Schedule to the Act of 1933 (26 Statutes 404, 509)).

(i) 25 Statutes 502.

(k) Town and Country Planning Act, 1932, Sched. III., Part I., para. 1 ; 25 Statutes 529.

Part I. of the Third Schedule to the Act (*l*), and to any necessary adaptations, (i.) The Lands Clauses Acts except sects. 92 and 127—132 of the Lands Clauses Consolidation Act, 1845 (*m*); (ii.) The Acquisition of Land (Assessment of Compensation) Act, 1919 (*n*); and (iii.) Sects. 77—85 of the Railways Clauses Consolidation Act, 1845 (*o*).

Before submission to the Minister, the responsible authority must publish notice of the making of the order in a local newspaper. The form of notice is prescribed. It must describe the area comprised therein and name a place where a copy of the order and of the map referred to therein may be seen at all reasonable hours. The authority must also serve either by delivery or by registered post (*p*) on every owner (*q*), lessee and occupier (except tenants for a month or a less period than a month) of any land to which the order relates, a notice in the prescribed form stating the effect of the order and that it is about to be submitted to the Minister for confirmation, and specifying the time within and the manner in which objections thereto may be made (*r*).

[350]

Objections may be made to the scheme by any person aggrieved by the order, but the Minister may require the objector to state in writing the grounds of his objection, and may confirm the order without a local inquiry if he is satisfied that all the objections made relate exclusively to matters which can be dealt with by way of compensation (*s*). Otherwise he is to cause a local inquiry to be held, and to consider any objection not withdrawn, following which he may confirm the order with or without modifications; but the order as confirmed is not, unless all persons interested consent, to authorise the compulsory purchase of land to which the order would not have related if it had been confirmed without modification (*s*). Certain lands are exempted from compulsory purchase by Part II. of Schedule III. to the Act (*t*).

As soon as a compulsory purchase order has been confirmed, the authority by whom it has been made must publish in a local newspaper a notice in the prescribed form, stating that the order has been so confirmed and naming a place where a copy of the order and of any map therein referred to may be seen at all reasonable hours, and must serve a like notice on every person who gave notice of objection and appeared to support it at the inquiry (*u*). A person aggrieved by the order has a right of appeal to the High Court on the ground of invalidity only (*u*). Subject thereto, the compulsory order becomes operative at the expiration of six weeks from the date of publication of notice of its having been confirmed.

(*l*) These modifications are reproduced in title COMPENSATION FOR TOWN PLANNING at p. 354 of Vol. III.

(*m*) 2 Statutes 1113 *et seq.*, and for details, see title COMPULSORY PURCHASE OF LAND.

(*n*) 2 Statutes 1176, and for details, see *ibid.*

(*o*) 14 Statutes 61—64, and for details, see *ibid.*

(*p*) Town and Country Planning Act, 1932, Sched. III., Part I., para. 6; 25 Statutes 531.

(*q*) This term means any person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land, or of any term of years therein granted or agreed to be granted by a lease or agreement, the unexpired term whereof exceeds three years; Town and Country Planning Act, 1932, s. 53; 25 Statutes 521.

(*r*) Town and Country Planning Act, 1932, Sched. III., Part I., para. 4; 25 Statutes 530.

(*s*) *Ibid.*, para. 5.

(*t*) Reproduced on pp. 355—357 of Vol. III.

(*u*) Town and Country Planning Act, 1932, Sched. I., Part III.; 25 Statutes 527.

As to the assessment of compensation to a landowner under the Acquisition of Land (Assessment of Compensation) Act, 1919, and the rules thereunder, see title COMPENSATION FOR TOWN PLANNING at pp. 359-363 of Vol. III.

The land, when acquired, is to be developed in accordance with proposals approved by the Minister (a). [350A]

Financial Arrangements—Loans for developing the garden city in accordance with proposals approved by the Minister under sect. 35 of the Act, may in certain circumstances be made by the Public Works Loan Commissioners (b). These powers may only be exercised during such period as the Treasury may determine, and any loans made must be subject to such conditions as the Treasury may impose, and be only up to such amount as is approved by the Treasury in any instance (b). The period for the repayment of the sums advanced must not exceed forty years. Money is only to be advanced on mortgage of the freehold or leasehold having not less than fifty years to run. The advance must not normally exceed three-quarters of the value (*infra*), to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate mortgaged, but advances may be made by instalments from time to time as the building of houses on the land mortgaged progresses, but so that the total of such advances does not at any time exceed the proper proportion of the then value, and the mortgage may be drawn accordingly (c). If the garden city plan includes a scheme for the provision therein of houses for the working classes which has been approved by the Minister, and an advance is sought for carrying out this particular part of the whole scheme, the advance may be for fifty years instead of forty years; and money may be advanced on leasehold property where there is a period of not less than ten years' excess over the period fixed for the repayment of the loan left unexpired. If the advance is to be made to a Housing Association within the meaning of the Housing Act, 1935, and principal and interest are guaranteed by a local authority for the purposes of Part III. of the Housing Act, 1925 (d), the proportion of the advance to the value of the security may be nine-tenths. In other cases if the advance exceeds two-thirds of the value, the Public Works Loan Commissioners are to require further security of such value as they may think fit in addition to a mortgage of the land and dwelling-houses.

Loans from the Public Works Loan Commissioners are to bear interest at such rate, not being less than $3\frac{1}{8}$ per cent. per annum, as the Treasury may from time to time authorise as being in their opinion sufficient to enable the loan to be made without loss to the Exchequer (e).

In addition to the power to raise loans through the Public Works Loan Commissioners, an authorised association has power, notwithstanding anything in their rules or constitution prohibiting the payment of interest on loan capital at a rate exceeding 6 per cent. per annum, to raise money on loan for the purposes of sect. 35 at a rate of interest not exceeding that for the time being fixed by the Treasury (f). [351]

(a) Town and Country Planning Act, 1932, s. 35 (4); 25 Statutes 507.

(b) *Ibid.*, s. 35 (5).

(c) Housing Act, 1925, s. 90 (4) (13 Statutes 1052), as applied by s. 35 (5) of Act of 1932. S. 90 has been amended by s. 29 (3), (4) of the Housing Act, 1935, but the amendments do not seem to alter the section as applied by the Act of 1932.

(d) 13 Statutes 1052.

(e) Housing Act, 1925, s. 90 (6); 13 Statutes 1052.

(f) Town and Country Planning Act, 1932, s. 35 (6); 25 Statutes 507.

Garden Suburbs and Garden Villages.—The provisions of sect. 35 of the Town and Country Planning Act, 1932, are also extended by sub-sect. (7) to garden suburbs and garden villages. These two phrases, like that of garden city, are not defined, but may be described briefly as an extension of such of the elements of a garden city as are appropriate or practicable to a suburb or a village. A suburb of a large town may be planned as a whole, built on land in a single ownership which may be that of a company formed by the inhabitants who propose to settle it, retain to some extent rural surroundings, and retain by means of the legal machinery of company law and leasehold tenure the benefit of any rise in value for the general advantage of its settlers. It cannot be a complete town, or restrict the size to which the city of which it is a part may grow, nor can it acquire an isolated and individual corporate life. A village, on the other hand, may be complete in itself and have every other feature and advantage of a garden city; but it is not of sufficient size to develop and enjoy those advantages which the larger population of a town can make self-supporting. Presumably, therefore, what the section means is that the provisions of the Act may be invoked for the development of a suburb or a village, where the scheme of development contains every feature of a garden city which is consistent with the nature of the undertaking. The Hampstead Garden Suburb is an example of the one; the village of Bournville of the other. [352]

Adoption by the Local Authority.—A garden city is a private estate. The company which governs it commercially is merely an owner whose boundaries happen to coincide with those of the area, and it has no local government powers. For local government purposes, the area falls within the province of the parish council, district council and county council who are established for the local government districts in which it is situate. Until the formation of the Letchworth U.D.C. in 1907, different parts of the Letchworth Garden City were administered by three different parish councils, and it fell within the area of two county councils. No local government powers have been conferred on garden cities as such by any statute, nor has any local authority as yet acquired the freehold of a garden city undertaking so as to unify the municipal and commercial government.

Provision is, however, made for such a fusion in garden cities as took place in the parallel case of Huddersfield. If the impetus comes from the garden city to have a local authority for its own area and with boundaries co-incident with its own, the usual methods for obtaining alterations of areas can be invoked (g). If, on the other hand, the impetus comes from the local authority, they may adopt the owning company's town planning scheme under sect. 6 (1) (b) of the Town and Country Planning Act, 1932 (h), by resolution so to do with or without modifications, and may acquire the freehold by the usual methods (see titles ACQUISITION OF LAND (OTHER THAN COMPULSORY), Vol. I., p. 53, and COMPULSORY PURCHASE OF LAND, Vol. III., p. 404). Any resolution so passed does not take effect unless and until it is approved by the Minister, and the detailed provisions of sect. 6 will apply so far as necessary (see title TOWN PLANNING SCHEMES). Probably, however, any such unification of functions would be effected by order,

(g) See title ALTERATION OF AREAS, Vol. I., p. 255.

(h) 25 Statutes 475.

and the provisions of the section would not be invoked. The departmental committee already referred to regarded the administrative difficulties as a serious check on the development in the future of such undertakings as Letchworth and Welwyn Garden City. [353]

Future Policy.—The Departmental Committee on Garden Cities declined to consider the question of garden cities, garden villages and satellite towns except as elements in regional and national planning. The committee stated that many of the principles involved in the creation of Letchworth and Welwyn Garden City are now generally accepted in town planning, and that the chief problem was to apply those principles to existing centres of population. They drew attention at some length to the evils of uncoordinated development and stressed the importance of dealing, for example, with the planning of roads, the placing of factories, playing fields and open spaces, main drainage, water, gas, electricity and transport as a single problem. One result of uncoordinated development which was of particular importance in considering the questions before the committee was the tendency of towns to grow beyond a convenient size. The optimum size naturally varies within wide limits. This growth raises problems of housing, transport and the supply of open spaces which are aggravated in many respects by the two remedies which have, so far, been usually applied, namely increase of density and the building of dormitory towns. Growth beyond the limits of convenience also tends to destroy the town as a community. The remedy suggested was to organise growth beyond the optimum by means of satellite units having some independent local life but depending on the parent town for those advantages which can be supported only by a large population. These units of development should not be merely dormitories but be, to an extent suitable to the circumstances, self-contained. The committee recommended that the machinery to be established for effecting the course proposed should be the establishment of a national Planning Board. The Minister of Health is to appoint the members of the Board and to be ultimately responsible for its activities. Its personnel should remain unaffected by changes of government. The first function of the Board should be to make an accurate study of the problem as affecting the country as a whole. The necessity for the collection of information was emphasised by the committee who pointed out that no adequate organisation existed to perform this function with the result that large misconceptions of what is actually occurring are prevalent. The next function of the Board would be to exercise correlating and driving power over the Government departments, local authorities and private persons concerned, leaving the M. of H. to exercise the control on which public and private interests depend for protection. The committee also drew attention to the desirability of the Board endeavouring to devise some means of making betterment over a large area available for meeting individual claims for compensation and so removing what the committee regarded as one of the major obstacles to a more advantageous distribution of population and industry. [354]

GARDENS AND SQUARES

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See also titles : LONDON SQUARES ;
OPEN SPACES ;
PUBLIC PARKS.

Introductory.—Ornamental gardens in towns in the centre of a square or crescent are often to be found where the whole of an estate originally belonged to, and was designed by, a single owner. Where the surrounding houses are let, this space is retained by the freeholder who grants rights of enjoyment to the tenants, and himself keeps it in order under covenant in his leases. If the freeholds of the surrounding houses have been acquired by a number of owners, the ownership of the garden may have been conveyed to trustees to administer for the benefit of all the owners, or it may remain vested in one or more of them subject to mutual rights to its enjoyment by the others and with covenants on their part to contribute to its upkeep, or there may be rights to its enjoyment but no arrangements for its upkeep, or no rights may have been granted to anyone, and the building owner may still have a right to build on the open space. [355]

Town Gardens Protection Act, 1863 (a). *Scope of the Act.*—In 1863 was passed “an Act for the protection of certain Gardens or Ornamental Grounds in Cities and Boroughs.” It does not extend to urban or rural districts and only applies to gardens which have been set apart otherwise than by the revocable permission of the owner for the use and enjoyment of the inhabitants. They, or some of them, must have acquired legal rights to such use and enjoyment, and not a mere licence to use (b). By sect. 7 it does not extend to any garden, ornamental ground or other land (1) belonging to the Sovereign in right of the Crown or of the Duchy of Lancaster, (2) under the management of the Commissioners of Works or of the Commissioners for the time being acting under the Crown Estate Paving Act, 1851 (c), or (3) for the due care and protection of which special provision is made by any public or private Act of Parliament. [356]

Powers of Local Authority.—Subject to these limitations, where there is such an enclosed garden or ornamental ground in any public square, crescent, circus, street, or other public place in a city or borough,

(a) 12 Statutes 372.

(b) See *Tulk v. Metropolitan Board of Works* (1867), L. R. 3 Q. B. 94 at pp. 117, 118; 36 Digest 248, 24.

(c) 14 & 15 Vict. c. 95.

and (i.) the trustees, commissioners, or other body appointed for its care, have neglected to keep it in proper order, or (ii.) no trustees, commissioners, or other body, have been appointed to care for the same, and, from the want of such care or from any other cause, the garden or ground has been neglected, the council of the city or borough are to take charge of it. They are to put up notices in it and make due inquiry, and if after this the person entitled to any estate of freehold in the garden or ground cannot be found, or if it is vested in any person by whom it is held subject to any condition or reservation for keeping the same as a garden or pleasure ground or that the same shall not be built upon, but not otherwise, the council are (i.) to cause any buildings or other encroachments made thereon since May 4, 1843, to be removed, and (ii.) if requested by a majority of two-thirds of the owners and of the occupiers of the houses surrounding it so to do, are to vest the same in a committee consisting of not more than nine nor fewer than three of the rated inhabitants of such houses to be chosen annually by such inhabitants, in order that the same may be kept as a garden or ornamental ground for the use of such inhabitants (sect. 1). [357]

Where this procedure has been adopted, the council, as successors to the vestry, may raise from the occupiers of the surrounding houses such sums as the committee may from time to time require to defray the expenses of the maintenance and management of the garden or ground by an addition to the general rate to be assessed on such occupiers (sect. 1). If the owners and occupiers, or the necessary two-thirds majority of them, do not agree to undertake the charge of it, the council may themselves take over the ownership and maintain it as an open place or street in such manner as appears to them most advantageous to the public. They are first to allow six months from the date of the notice, or such further time as they shall think expedient to allow for such agreement to be come to, and must execute an instrument formally vesting the land in themselves as owners. Apart from these express powers, there are saved and reserved to all persons and their sequels in title such estate, right, title and interest as they would have had in the garden or ground if the Act had not been passed (sect. 1). [358]

Protection from Encroachments.—In addition to protection from neglect, the council may also protect a garden from encroachments. By sect. 2 of the Act if any person has, through ownership or otherwise of a house or other property, a right to require that a garden or ornamental ground shall be kept and maintained as such or unbuilt upon, he may give notice in writing signed by him to the council requesting them to protect such right, and they may, if they think fit after due inquiry, accede to such request. If they do so, the right of the person complaining to require the maintenance of the garden or ground as such or its preservation unbuilt upon, is thereupon vested in the council, who are empowered in their own name to exercise all rights, powers and privileges in relation thereto and to take such legal proceedings for asserting, defending, and protecting the same, as the complainant might formerly have exercised or taken. The expenses of the council will be defrayed out of the borough fund (*d*). It is believed that transfers of the management of squares made under the Act of 1863 are not common. [359]

(*d*) Under L.G.A., 1933, ss. 185—6 ; 26 Statutes 407 ; superseding the second half of s. 3 of the Act of 1863.

Bye-Laws.—Where a committee of inhabitants are constituted for the management of a garden or ground under sect. 1 of the Act of 1863, they may make, revoke and alter, bye-laws for the management of the same and for the preservation of the trees, shrubs, plants, flowers, rails, fences, seats, summer-houses and other things therein. The bye-laws are to be entered in a book kept for that purpose by the committee, signed by the chairman of the meeting at which they are passed, which book may be produced and read and taken as evidence of such bye-laws in all courts of law. They do not come into operation until they have been allowed either by a judge of one of the superior courts, or by quarter sessions, who are, on the request of the committee, to inquire into the bye-laws tendered to them, and to allow or disallow them as they think fit (sect. 4). [360]

Summary Offences.—Breaches of the bye-laws may be punished by a penalty not exceeding £5 (sect. 4) recoverable summarily (sect. 6). A further summary penalty not exceeding 40s., with an alternative of fourteen days' imprisonment, may be imposed under sect. 5 on any person for (1) throwing rubbish into any such garden, (2) trespassing therein, (3) getting over the rails or fence, (4) stealing or damaging the flowers or plants, or (5) committing any nuisance therein. An offender may be apprehended by a police constable who sees the commission of the act, and, if summary proceedings are instituted, and the ownership of the property of such garden, flowers or plants needs to be stated, it is sufficient to describe the same as the property of the committee by the name of A.B. and others (sect. 5). [361]

Open Spaces Act, 1906.—Such a garden is also within the definition of "open space" in sect. 20 of the Open Spaces Act, 1906 (e), and sect. 2 of that Act expressly refers to gardens. The types of local authority who may invoke the provisions of the Act of 1906 are much wider than in the Town Gardens Protection Act, as by sect. 1 they include county councils, borough councils, district councils, and parish councils (where the last-named have obtained an order of the county council investing them with the powers of the Act). Any of these councils is empowered by sect. 9 either to acquire outright, or to undertake the entire or partial care, management and control of, an open space whether any interest in the soil is transferred to them or not.

Power to transfer the garden to the council will be found in sects. 2 and 5, but sect. 2 is of little general use as it extends only to open spaces placed under the care and management of trustees or other persons in pursuance of a local or private Act to preserve and regulate it as such.

By sect. 5 of the Act, where the garden is subject to rights of user for exercise and recreation in the owners or occupiers, or both, of houses round or near the same, whether the rights are secured by covenant or not, the owner, including a lessee or other limited owner, of the garden may, with the consent signified by special resolution of such owners or occupiers or both, either convey, lease, or agree as before with the council for the opening of the garden to the public and its care and management by the council, either at all or at specified times. If this is done, the owner is discharged from any liability to any person entitled to rights of user in respect of any act done in accordance with the consent given. Where the garden is used for exercise and recreation

by the inhabitants of certain houses only, some of whom have rights of property and user therein, such owners and occupiers may convey to the council rights of entry, use or enjoyment, in trust for the public subject to such terms and conditions as may be agreed upon. [362]

If the council acquire such a garden under the foregoing provisions, they have power under sect. 10 of the Act to maintain it at the cost of the local rate. Subject to any conditions upon which the estate or control was acquired, they may hold and administer the garden in trust to allow its enjoyment by the public as an open space within the meaning of the Act and under proper control and regulation and for no other purpose, and they may maintain and keep it in a good and decent state, and may inclose it or keep it inclosed with proper railings and gates, and may drain, level, lay out, turf, plant, ornament, light, provide with seats, and otherwise improve it, and do all such works and things and employ such officers and servants as may be necessary. By sect. 15 of the Act they may make bye-laws for its regulation, and expenses incurred in the execution of the Act may be defrayed from the county fund or rate fund under the general provisions applicable to the particular council in Part. VIII. of L.G.A., 1933, but expenses incurred by an R.D.C. are to be defrayed as special expenses (f). A power of borrowing is also given by sect. 18 of the Act of 1906 (g).

The same savings for royal parks, the Crown or the Duchy of Lancaster, and property under the management of the Office of Works or under the Crown Estate Paving Act, 1851, as those in sect. 7 of the Town Gardens Protection Act, 1863 (h), are repeated in sect. 19 of the Open Spaces Act, 1906, with the additional exclusion of any metropolitan common and the Inner and Middle Temple. [363]

London.—See title LONDON SQUARES.

(f) Open Spaces Act, 1906, s. 17 (d) ; 12 Statutes 390, and L.G.A., 1933, s. 190 ; 26 Statutes 400.

(g) 12 Statutes 390.

(h) See *ante*, p. 170.

GAS

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See also titles : BREAKING UP OF ROADS ;
HIRE-PURCHASE ;
LIGHTING AND WATCHING ;
STREET LIGHTING.

INTRODUCTORY

Government Control.—This control is exercised by the Board of Trade. Any expenses of the Board of Trade which in the opinion of the Treasury are directly attributable to the execution of the Board's powers and duties under the Gas Undertakings Acts, 1920 to 1934, are to be paid out of a fund known as the gas fund (a).

The Board of Trade are to prescribe in each year the rate at which all undertakers in respect of whom an order under the Gas Regulation Act, 1920, has been made shall contribute to the gas fund (b). The prescribed rate of contribution must not, however, exceed the rate of

(a) S. 7 (2) of Gas Regulation Act, 1920 (8 Statutes 1285), and s. 28 of Gas Undertakings Act, 1934 (27 Statutes 324).

(b) Act of 1920, s. 7 (3) and (4) (8 Statutes 1285).

3s. for each 5,000 therms sold by the undertakers in the preceding year, excluding gas sold to other undertakers in bulk for distribution (c). The rate prescribed in respect of gas supplied separately for industrial purposes is to be not more than one-half of the rate prescribed in respect of other gas (c). [364]

Classes of Statutory Undertakers.—In the Gas Regulation Act, 1920, the expression “undertakers” or “gas undertakers” means any county, borough or district council, or company, body or person authorised to supply gas by any Act of Parliament (other than the P.H.A., 1875), or any order having the force of an Act of Parliament (d). Apparently the exclusion of local authorities authorised to supply gas under the P.H.A., 1875, only covers those councils who supply gas under sect. 161 of that Act (e), without having obtained a provisional order or special order. This exclusion must be borne in mind in reading the Gas Undertakings Acts, 1920 to 1934, but the number of councils so supplying gas is very small indeed.

Gas is supplied in England and Wales by 247 local authorities (including Gas Boards) and by about 659 companies. [365]

Local Authorities.—Local Authorities in England and Wales with gas undertakings are nearly all borough councils and urban district councils. Very few rural district councils possess a gas undertaking. Any of these councils (including an R.D.C. who have been invested with urban powers) are authorised by sect. 161 of the P.H.A., 1875 (e), to supply gas within their area wherever no company, body or person (other than the council) have been authorised by Act or order to give a supply. The section also allows such a council to obtain a provisional or special order from the Board of Trade (f), authorising the maintenance of a gas undertaking. Such an order is usually essential, as without it streets could not be broken up to lay gas mains.

Borough and urban district councils, and rural district councils invested with urban powers, are by sect. 162 of the P.H.A., 1875 (g), further authorised for the purpose of supplying gas within their district, and with the sanction of the Board of Trade, to purchase all the rights, powers and privileges and all or any of the lands, premises, works and other property of a gas company (subject to all liabilities attached thereto at the time of purchase) upon such terms as may be agreed between the council and the company. If the company were authorised to supply gas by a Gas Act or order, it would seem that on such a purchase the council stand in the shoes of the company, and that the Act or order (except clauses which are inappropriate to a local authority) governs the operations of the council. [366]

Joint Boards.—Parliament has also by local Act authorised the constitution of joint boards for the purchase or acquisition of gas undertakings in the areas of more than one local authority and supplying gas in these areas (h). The councils in whose areas the supply

(c) Act of 1934, Sched. II. (27 Statutes 330).

(d) Act of 1920, s. 18 (8 Statutes 1290), as amended by Act of 1934, Sched. II. (27 Statutes 330).

(e) 13 Statutes 692.

(f) The powers of the M. of H. with regard to gas undertakings were transferred to the Board of Trade by S.R. & O., 1920, No. 2125.

(g) 13 Statutes 693.

(h) Existing gas boards and the dates of their local Acts: Accrington Gas and Water, 1894, Hebden Bridge and Mytholmroyd, 1895, Radcliffe and Little Lever, 1921, Stretford and District, 1922, Swinton and Mexborough, 1909, Wath and Bolton, 1908.

of gas is to be given by the board are usually authorised by the local Act creating the board to appoint a specified number of the members of the board, and the board are authorised to borrow money for gas purposes up to a prescribed amount. Where a joint board is formed, provision is frequently made that gas shall be supplied at cost price, or that any surplus may be either employed in reducing charges or divided between the constituent councils. [367]

Companies.—Gas companies comprise companies working under statutory powers conferred by local Act, provisional order or special order of the Board of Trade, and companies having no statutory powers. Gas companies having statutory powers consist of companies incorporated by statute and companies registered under the Companies Act, 1929 (*i*), or an Act superseded by that Act. When a company is incorporated by statute, the Act usually applies to them the Companies Clauses Acts, 1845, 1863, 1869 and 1888 (*k*). Registered companies with statutory powers are subject to their memorandum and articles of association as modified by the provisional or special order conferring statutory powers upon the company. As to companies without statutory powers, see *post*, p. 198. [368]

Mode of Granting Statutory Powers.—Statutory powers are obtained by special Act or by special order of the Board of Trade (*l*), and never at the present day by a provisional order of that board (*m*). A special Act will be necessary where it is desired to obtain compulsory powers to purchase land or to incorporate any principle for which little or no precedent exists. Local authorities may, as a matter of convenience, often obtain special powers as to their gas undertaking by clauses included in a local Act promoted by them for general purposes. The practice of obtaining provisional orders, which require confirmation by Act of Parliament, has been practically superseded by the special order procedure authorised by sect. 10 of the Gas Regulation Act, 1920 (*n*). All local Acts and orders of gas undertakers will incorporate provisions of the Gasworks Clauses Acts, 1847 and 1871 (*o*); prescribe an authorised area of supply within which statutory power to supply gas would not be granted to any other company, body or person; impose a maximum price for gas and in the case of a company a limit on the dividend; and preclude the manufacture of gas and residuals on land other than that scheduled to the Act or order. In granting statutory powers, Parliament or the Board of Trade would require the undertakers to adopt the thermal basis of charge and be subject to tests in respect of calorific value, purity and pressure. [369]

Special Order.—A special order does not require confirmation by Act of Parliament, but must be laid in draft before both Houses of Parliament, and both Houses must approve the draft by resolution, with or without modification (*p*). The procedure to be followed by undertakers who apply for a special order is prescribed by the Gas (Special Orders) Rules, 1922 (*q*), which provide that the applicants

(*i*) 2 Statutes 775.

(*k*) *Ibid.*, 648, 692, 713, 721.

(*l*) Act of 1920, s. 10; 8 Statutes 1287.

(*m*) Under the Gas and Water Works Facilities Acts, 1870 and 1873; 8 Statutes 1254, 1275.

(*n*) As to special orders, see below.

(*o*) 8 Statutes 1215, 1263.

(*p*) Act of 1920, s. 10 (*4*); 8 Statutes 1288.

(*q*) S.R. & O., 1922, No. 187.

must advertise the intended application in the *London Gazette* and the local press (r. 1).

A copy of the advertisement and of the draft order must be deposited at the H.O., the M. of H. and other Government departments as well as at the office of the council of any county, borough, urban and rural district wholly or partly within the existing and any proposed area of supply. A copy of the advertisement must in addition be served upon the owner, lessee and occupier of every dwelling-house situate within 300 yards of any land proposed to be used for the construction of works for the manufacture or storage of gas or the manufacture or conversion of residual products (r). Copies of any maps required must be deposited at the office of the Clerk of the Parliaments, House of Lords, and at the Private Bill Office, House of Commons. A copy of the draft order and maps must be deposited for public inspection at an office of the undertakers and at the office of the clerk of the county council (s) of every county, riding or division wholly or partly within the existing and any proposed area of supply (r. 2).

[370]

Where the applicants are a local authority and borrowing powers are sought, the application must be accompanied by a statement of the amounts borrowed and authorised to be borrowed (if any) for the purposes of the gas undertaking, and a certified statement showing under separate heads the purposes for which the borrowing powers are sought and the amounts required for each purpose (r. 3 (7)).

Any local authority, public authority or person desiring to object to the draft order may do so by registered letter addressed to the Director of Gas Administration, Board of Trade, before the date specified in the advertisement. Such objection must state the specific grounds of objection and the alteration of the draft order asked for (r. 5). [371]

Any power which could formerly be obtained by provisional order (t) may now be granted by special order, and the following additional powers may be granted to undertakers under sect. 10 of the Act of 1920 (a), sect. 7 of the Act of 1929 (b) and sect. 17 (2) of the Act of 1934 (c):

- (1) To obtain a supply of gas in bulk from any source whether situated within or without their authorised limits of supply, or to give a supply of gas in bulk to any other undertakers (d) through a pipe outside the authorised limits of supply of either of these undertakers and to lay a pipe for that purpose;
- (2) to give a separate supply of gas for industrial purposes;
- (3) to allow a local authority to enlarge their limits of supply by giving a supply in an area not supplied by any undertakers (d) or previously supplied by an undertaking which has been purchased by the applicants;

(r) Undertakers may store gas on unscheduled land provided the written consent of the owners, occupiers, etc., of premises situate within 300 yards of the site is obtained. See s. 5 of Gasworks Clauses Act, 1871; 8 Statutes 1264.

(s) The clerk of the county council is substituted for the clerk of the peace by s. 101 of L.G.A., 1933; 26 Statutes 360.

(t) Under the Gas and Water Works Facilities Acts, 1870 and 1873; 8 Statutes 1254, 1275.

(a) 8 Statutes 1287.

(b) *Ibid.*, 1296.

(c) 27 Statutes 317.

(d) For definition, see s. 18 of Act of 1920 (8 Statutes 1290), as amended by Second Schedule to Act of 1934 (27 Statutes 330).

- (4) to make arrangements for the purchase by agreement of other undertakings, or the joint working or amalgamation of undertakings : in such cases the agreement is usually scheduled to the order ;
- (5) to establish superannuation, pension and other like funds ;
- (6) to authorise the raising of capital or borrowing of money ;
- (7) to purchase or redeem loan capital, or obsolete or unproductive capital not represented by available assets ;
- (8) to construct gas works or to manufacture or supply gas in any area within the limits of supply of any existing undertakers who have failed at the date of the application to lay down or provide mains for the supply of gas in the area, prohibiting the existing undertakers from exercising in the area any of the powers conferred upon them, provided that five years have elapsed since the date upon which such powers were first obtained by the existing undertakers (e) ;
- (9) to lay a pipe outside the limits of supply for the purpose of facilitating supplies within their authorised limits (f) ;
- (10) to make provision for the joint use by undertakers of plant, research establishments and other facilities (f) ;
- (11) to enable thermal unit undertakers, who have purchased a gasworks from non-thermal unit or non-statutory undertakers, temporarily to charge for gas supplied from that gasworks on the basis of cubic feet supplied, and to be exempt from liability to deficiency in the calorific value of the gas so supplied until a date specified in the order (f). [372]

By a special order the Board of Trade may also modify or amend the provisions of any special Act or other provision relating to the undertaking, in so far as may be necessary for the proper and efficient conduct of the undertaking (g) : and may modify any enactment regulating the undertaking by including therein provisions corresponding to those in any special Acts or provisional orders regulating other gas undertakings (h).

The existing enactments, not contained in public general Acts, applying to a gas undertaking, may be consolidated by special order without amendment or with such amendments as could lawfully be made by special order (i). An application for a special order may be made by a company authorised to supply electricity or water in addition to gas (k), and power may be granted to such a combined company to borrow for the purposes of the gas undertaking upon the security of the whole undertaking (l). [373]

SUMMARY OF STATUTORY POWERS

Allusion has already been made (*ante*, on pp. 176, 177) to some of the powers ordinarily granted by special Act or order. [374]

(e) Act of 1929, s. 7 (8 Statutes 1296), as amended by Second Schedule to Act of 1934 (27 Statutes 331).

(f) Act of 1934, s. 17 (2) ; 27 Statutes 317.

(g) Act of 1920, s. 10 (2) (h) ; 8 Statutes 1288.

(h) Act of 1929, s. 7 ; 8 Statutes 1296.

(i) Act of 1934, s. 15 (1) ; 27 Statutes 317.

(k) *Ibid.*, s. 15 (2).

(l) Act of 1929, s. 7 ; 8 Statutes 1296.

Duty to Supply.—By sect. 11 of the Gasworks Clauses Act, 1871 (*m*), an obligation is imposed upon statutory undertakers to give and continue a supply of gas to any premises situate within twenty-five yards from any gas main, upon being required so to do by the owners or occupiers, provided that owners or occupiers are willing, upon being requested so to do, to give security for the payment of all moneys which may become due in respect of any pipe furnished by the undertakers in respect of gas supplied. [375]

Breaking up of Streets.—Power to break up the soil and pavement of streets and bridges within the area of supply for the purpose of laying down, inspecting, repairing and renewing mains and pipes is contained in sects. 6, 7 of the Gasworks Clauses Act, 1847 (*n*), and is applicable to all undertakers with whose special Act, provisional or special order, these sections are incorporated. The term "street" includes any square, court or alley, highway, lane, road, thoroughfare or public passage or place, within the limits of the special Act (*o*).

In breaking open the soil and pavement of bridges (*p*), undertakers may dig a trench and lay the pipe resting on the bridge (*q*), but they may not interfere with the structure or injure the fabric of the bridge (*r*).

In the execution of these powers, the undertakers must do as little damage as may be, and make compensation for any damage which may be done (*s*).

Undertakers are not entitled to lay pipes in private property without the consent of the owner and occupier thereof; but where a main has been lawfully laid on private land, the undertakers have a right of access to that land for the purpose of repairing, renewing or replacing the main so laid (*t*). But as respects undertakers who are a local authority, sect. 7 of the Gasworks Clauses Act, 1847, is superseded by sect. 80 of the P.H.A., 1925 (*u*), which allows them to lay down, maintain and repair pipes in any street laid out but not dedicated to public use, on the application of any owner or occupier of premises abutting on the street. If, however, the street should be used by a railway, canal, dock or harbour undertaking the consent of the owners must be obtained, but cannot unreasonably be withheld.

As to the notice which must be given to the highway authority before a street is broken up, and the duty to reinstate the street, see title BREAKING UP OF ROADS at pp. 236, 239 of Vol. II. [376]

(*m*) 8 Statutes 1265. For penalty, see s. 36 of the Act.

(*n*) 8 Statutes 1217, 1218.

(*o*) Act of 1847, s. 3. Cf. definition of "street" in s. 4 of P.H.A., 1875; 13 Statutes 624. In s. 3 the definition includes streets dedicated to but not repairable by the public. As to private streets not dedicated, see *Selby v. Crystal Palace District Gas Co.* (1862), 31 L. J. (Ch.) 595; 25 Digest 472, 19. Certain powers to break up private streets are normally conferred by special Act or order; see the model Gas Bill of House of Lords (1923), Cl. 17. The Board of Trade may by special order authorise undertakers to lay pipes outside their limits of supply for the purpose of giving a supply of gas in bulk or to facilitate supplies within their authorised limits; see s. 17 (2) of Gas Undertakings Act, 1934; 27 Statutes 317.

(*p*) As to the dedication of the street carried by the bridge, see *Taff Vale Rail. Co. v. Pontypridd U.D.C.* (1905), 69 J. P. 351; 26 Digest 291, 228.

(*q*) *Taff Vale Rail. Co. v. Cardiff Gas Light and Coke Co.* (1907), 71 J. P. 350; 25 Digest 472, 17.

(*r*) *Glasgow Corp'n. v. Glasgow and South Western Rail. Co.*, [1895] A. C. 376; 43 Digest 1072, 100.

(*s*) As to compensation, see *Harpur v. Swansea Corp'n.*, [1913] A. C. 597; 43 Digest 1097, 272.

(*t*) Act of 1847, s. 7; 8 Statutes 1218.

(*u*) 13 Statutes 1152.

The undertakers are liable to keep the road or pavement which they have broken up in good repair for three months after reinstatement, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside (*a*)

Penalties are imposed in cases where undertakers delay unduly to reinstate (*b*). [377]

Meters.—All meters by means of which gas is supplied by any undertakers to any consumer must be stamped in accordance with the Gas Meter Regulations, 1920 (*c*). County councils and certain borough councils may under the Sale of Gas Act, 1859 (*d*), establish meter testing stations. The powers and duties of the Board of Trade under sects. 5 and 6 of the Weights and Measures Act, 1904, extend to instruments for measuring gas (*e*). The fees for the examination, testing and stamping of meters are prescribed by the Gas Meter (Fees) Order, 1922 (*f*), made under sect. 11 of the Act of 1920 (*g*). The provisions of the Sale of Gas Act, 1859, regarding the testing of gas meters, or of any special Act or order relating to an undertaking with respect to which an order has been made under the Gas Regulation Act, 1920, are to cease to have effect in so far as they are to the same effect as, or are inconsistent with, the provisions of that Act or any order made thereunder (*h*). Undertakers may let for hire meters and any fittings thereto upon such terms as may be agreed, and such meters are not liable for distress for rent, or to be taken in execution under any process of the courts (*i*). Gas must be supplied by means of a duly stamped meter (*k*). Where a meter used by a consumer is found to register erroneously to a degree exceeding the degree permitted by the Gas Meter Regulations, 1920 (*i.e.* more than 2 per cent. over or 3 per cent. under the actual quantity passed), the meter is to be deemed to have registered erroneously since the date upon which it was last read before the test, and an allowance to, or a surcharge upon, the consumer is to be made (*l*). Every person who, wilfully, fraudulently or by culpable negligence injures or suffers to be injured any pipes, meter or fittings belonging to the undertakers, or alters the index of a meter, or prevents a meter from registering the quantity of gas supplied, or fraudulently abstracts gas, is liable to a penalty not exceeding £5 for every such offence in addition to the amount of the damage sustained (*m*). [378]

Prepayment Meters.—A prepayment meter means a meter or appliance by which the quantity of gas supplied is regulated according to the amount of money prepaid for the gas. The price of gas to prepayment meter consumers must be the same as that to consumers who are supplied through an ordinary meter, but who otherwise consume gas in like circumstances and for the same purpose (*n*). In

(*a*) Act of 1847, s. 10 ; 8 Statutes 1220.

(*b*) *Ibid.*, s. 11.

(*c*) Act of 1920, s. 13 ; 8 Statutes 1289 ; S.R. & O., 1920, No. 2354.

(*d*) 8 Statutes 1230.

(*e*) Act of 1920, s. 12 ; 8 Statutes 1289.

(*f*) S.R. & O., 1922, No. 625.

(*g*) 8 Statutes 1289.

(*h*) Act of 1920, s. 19 ; 8 Statutes 1291.

(*i*) Gasworks Clauses Act, 1871, s. 18 ; 8 Statutes 1267.

(*k*) Act of 1920, s. 13 ; 8 Statutes 1289.

(*l*) Act of 1934, s. 23 ; 27 Statutes 321.

(*m*) Gasworks Clauses Act, 1871, s. 38 ; 8 Statutes 1272.

(*n*) Act of 1934, s. 7 (1), (2) ; 27 Statutes 309.

addition to the price of gas, undertakers are entitled to charge for the hire, fixing, maintenance and repair of the meter and fittings supplied therewith as well as, in the case of a prepayment meter, the cost of collection therefrom. Many special Acts and orders prescribe that such charges shall be calculated according to the number of therms consumed and be subject to certain specified maximum amounts (*o*). Such provisions are not, however, applicable to fittings of a class or description not ordinarily provided by the undertakers in connection with a prepayment meter, or are of a quality superior to that of fittings ordinarily so provided, if such fittings are supplied at the written request of the consumer containing an acknowledgment that he is acquainted with the statutory provisions regulating the matter (*p*). [379]

Antifluatuators.—A common-form provision in Gas Acts and orders allowed the undertakers by notice to require a consumer, who used gas for working or supplying a gas engine, compressor or similar apparatus, at his own expense to fit and keep in order an antifluatuator, and where a consumer used for or in connection with the gas supplied, compressed air or any gas not supplied by the undertakers, the undertakers might by notice require the consumer to provide, fix and keep in use an appliance for the purpose of preventing the compressed air or gas not supplied by the undertakers from entering their mains. Provisions to this effect now appear in sect. 25 of the Gas Undertakings Act, 1934 (*q*), and after October 1, 1934, no consumer may instal or use an apparatus for compressing air or gas not supplied by the undertakers, unless he has given fourteen days' notice in writing to the undertakers of his intention so to do. Undertakers are to give notice of the effect of these provisions to existing consumers and to any new consumer in the first demand note delivered to him. [380]

Supply of Fittings. Showrooms.—A special Act or order of gas undertakers usually contains express powers with regard to gas fittings. A clause in the model Gas Bill of the House of Lords authorises undertakers to purchase, sell, let for hire, fix, repair and remove engines, stoves, ranges, pipes and other gas fittings for lighting, motive power, heating, ventilating, cooking and any other purpose, and to provide all materials and work necessary or proper in that behalf. This is usually subject to a proviso that the undertakers shall not themselves manufacture such fittings. In connection with fittings, undertakers may demand and take such remuneration or rents and charges, and make such terms and conditions as may be agreed upon. The clause in the model Gas Bill also provides that where such fittings are marked or impressed with a sufficient mark or brand indicating the undertakers as owners, the fittings shall not be subject to distress for rent, or be liable to be taken in execution under process of any court or proceedings in bankruptcy against the person in whose possession they may be. Where the undertakers are a local authority, the clause usually provides that the charges for fittings, or for their fixing, repairing or removal, shall be so adjusted as to meet any expenditure incurred by the authority in connection with them, including interest and sinking fund payments on money borrowed. Further, the authority are normally under an

(*o*) Model Gas Bill of House of Lords, clause 22. As to London, see Metropolis Gas (Prepayment Meter) Act, 1900 (63 & 64 Vict. c. cclxxii.).

(*p*) Act of 1934, s. 22 ; 27 Statutes 321.

(*q*) 27 Statutes 322.

obligation to state on demand notes the amount of every sum charged in respect of fittings, and the total sums expended and received in each year (including interest and sinking fund payments) are to be shown separately in the published accounts.

It is a common practice to incorporate in special Acts and orders a provision that gas fittings let for hire by the undertakers shall remain their property although they may be fixed or fastened to the premises.

Many special Acts and orders contain specific authority to provide, fit up and maintain showrooms and offices and exhibit specimen installations, machinery, fittings and appliances used in the manufacture and consumption of gas and resulting from its manufacture. The clause further provides for the giving of demonstrations and the payment of persons in connection with them.

Although it is customary to include the model clause, it is probable that undertakers who are authorised to "carry on the business usually carried on by gas undertakers" would be entitled to provide showrooms. [381]

Residuals.—The powers of undertakers to purchase residuals is defined in sect. 4 of the Gas Undertakings Act, 1929 (*r*), although some undertakers may have wider powers under a special Act. Sect. 4 enables undertakers to purchase any residuals arising from the manufacture of gas, the operation of coke ovens, or the carbonisation or gasification of coal or coke. In addition undertakers may purchase residuals arising from a primary treatment of residuals.

Residuals may be purchased from any company, body or person which carries on a gas undertaking whether with statutory authority or otherwise, operates coke ovens, or carries on any process of carbonisation or gasification of coal or coke.

Sect. 4 also allows undertakers to purchase residuals in such quantities as they think fit, and to exercise with regard to residuals purchased the powers which would have been exercisable by them if such residuals had arisen in carrying on their gas undertaking in accordance with their statutory powers.

These powers commonly include a power of selling residuals, and of manufacture into other forms. This will include power to manufacture a chemical reagent necessary for conversion of such residual products (*rr*). [382]

Supplies in Bulk.—Reference has already been made, *ante*, at p. 177, to the authorisation by special order of supplies in bulk. But by sect. 17 (1) of the Gas Undertakings Act, 1934 (*s*), any statutory gas undertakers (*t*) may, upon such terms as may be agreed, give or obtain a supply of gas in bulk, to or from any other statutory gas undertakers, through a pipe passing through any point at which the authorised limits of supply adjoin each other. Where then a supply in bulk can be afforded through such a pipe, no order is needed. [383]

Supply of Bordering Premises.—The Board of Trade may by an ordinary order authorise undertakers to supply specified premises outside their limits of supply and not being within twenty-five yards of the mains of the undertakers within whose limits they are situate (*u*). Such an order may not be made unless with the consent of the undertakers

(*r*) 8 Statutes 1295.

(*rr*) *Deuchar v. Gas, Light and Coke Co.*, [1925] A. C. 691; 25 Digest 471, 10.

(*s*) 27 Statutes 317.

(*t*) See definition of "undertakers" in s. 18 of the Act of 1920; 8 Statutes 1291.

(*u*) Act of 1929, s. 5 (1); 8 Statutes 1295.

and every local authority within whose limits the premises are situated, but such consent may not be unreasonably withheld (*a*). An application for such an order must be advertised in the local press and a copy of the advertisement deposited with the undertakers and every local authority within whose area the premises are situate (*b*). Any local or other public authority, company or person may object to the application (*b*). [384]

Power of Entry.—Any officer appointed by the undertakers may at all reasonable times enter premises in which there is a service pipe connected with the gas mains of the undertakers in order to inspect meters, fittings and works for the supply of gas, except where the consumer has applied to the undertakers to disconnect the service pipe from the mains and they have failed to disconnect it within a reasonable time (*c*). If premises, or a part of premises, are wholly occupied as a factory or workshop within the meaning of the Factory and Workshop Act, 1901, the power of inspection extends only to the inspection of meters and service pipes connecting the meters to the gas main (*c*). Where consumers of gas cease to require a supply or where the supply has been legally cut off, the undertakers may, after giving twenty-four hours' notice to the occupier signed by a competent official, or, if the premises are unoccupied, to the owner or lessee or their agent, enter the premises for the purpose of removing pipes, meters, fittings or apparatus belonging to them (*d*). The undertakers may also enter after giving a like notice on a change of tenancy, if the new occupier does not require a supply (*e*). Where the owner of unoccupied premises cannot be ascertained after diligent inquiry, the notice may be affixed upon a conspicuous part of the premises forty-eight hours before entry (*f*). [385]

Recovery of Charges.—Sums due in respect of gas supplied and of the cost of cutting off the supply are recoverable by distress under sect. 23 of the Act of 1871 (*g*). Rents for gas or for the hire of meters or fittings may be recovered in like manner as a penalty (*h*). Other amounts due to the undertakers are recoverable in any court of competent jurisdiction and where the amount does not exceed £100 in the county court of the district (*i*). A justice may issue a distress warrant for the seizure of goods in case where no appearance is made by a person on a summons for sums due for gas supplied (*k*). [386]

Cutting off Supply.—Undertakers may cut off the service pipe where a person fails to pay for the gas supplied (*l*). The expenses lawfully incurred in cutting off the supply may be recovered in like manner as a penalty (*m*). In cutting off the supply, the undertakers may

(*a*) Act of 1929, s. 5 (3), as amended by Second Schedule to Act of 1934; 27 Statutes 331.

(*b*) Gas (Bordering Premises) Rules, 1929; S.R. & O., 1929, No. 531.

(*c*) Gasworks Clauses Act, 1871, s. 21 (8 Statutes 1268), as amended by s. 21 (1) of Act of 1934 (27 Statutes 320).

(*d*) Act of 1871, s. 22; 8 Statutes 1268.

(*e*) Act of 1934, s. 21 (4); 27 Statutes 320.

(*f*) *Ibid.*, s. 21 (3).

(*g*) 8 Statutes 1268.

(*h*) Act of 1871, ss. 40, 44; 8 Statutes 1273. See also *post*, p. 184.

(*i*) *Ibid.*, s. 41; 8 Statutes 1273.

(*k*) *Ibid.*, s. 23; 8 Statutes 1268.

(*l*) Act of 1847, s. 16; 8 Statutes 1222.

(*m*) Act of 1871, s. 40; 8 Statutes 1273.

disconnect the service pipe at the meter (whether the pipe belongs to them or not) and may enter the premises for that purpose (*n*). Undertakers are under no obligation to resume the supply until the occupier has made good the default and paid the reasonable expenses of reconnecting (*n*). Penalties are imposed on persons reconnecting the supply without the consent of the undertakers (*n*). [387]

Notice of Removal.—If an occupier quits premises, being premises supplied with gas by meter by the undertakers, without sending twenty-four hours' notice to them by registered post or otherwise, he is liable to pay all money accruing due for gas supplied by them to the premises, and for meter rent up to the next day on which the register of the meter on the premises is usually ascertained, or the date from which any subsequent occupier of the premises requires the undertakers to supply gas to the premises, whichever first occurs (*o*). Every demand note for gas charges payable to the undertakers must be endorsed with a statement to this effect (*o*). The undertakers may refuse to supply a person who has previously quitted premises at which gas was supplied to him by them without his paying all moneys due from him for gas supplied or for meter rent (*p*). [388]

Recovery of Damages and Penalties.—By sect. 40 of the Gasworks Clauses Act, 1847 (*q*), any damages and penalties, the recovery of which is not otherwise provided for, are to be recovered in accordance with sects. 140 to 159 of the Railways Clauses Consolidation Act, 1845 (*r*). Under sect. 145 of the Act of 1845 (*s*) every penalty or forfeiture, the recovery of which is not otherwise provided for, may be recovered summarily before two justices.

The applied clauses likewise regulate the determination of any matter referred to the justices and empower the justices, in cases where an order has not been obeyed, to issue a distress warrant (*t*).

An appeal from the justices lies to quarter sessions (*u*). [389]

Benefits for Employees.—Clauses commonly included provide for the establishment of superannuation schemes (*a*), and the provision of dwelling-houses (*b*) and recreation grounds for employees (*c*). Profit-sharing schemes are very common in the gas industry (*d*). [390]

FINANCE OF GAS UNDERTAKINGS

Borrowing by Local Authorities.—It is usual for a Gas Act or order relating to a local authority to authorise the borrowing of specified sums for specific purposes and to prescribe the period during which such loans are to be repaid. The local authority are also authorised to borrow, subject to the sanction of the M. of H., such further sums as may be necessary for any of the purposes of the gas undertaking.

(*n*) Act of 1934, s. 20 ; 27 Statutes 319.

(*o*) *Ibid.*, s. 18.

(*p*) *Ibid.*, s. 19.

(*q*) 8 Statutes 1228.

(*r*) 14 Statutes 79—83.

(*s*) *Ibid.*, 81.

(*t*) Railways Clauses Consolidation Act, 1845, s. 140 ; 14 Statutes 79.

(*u*) *Ibid.*, s. 157 ; 14 Statutes 82.

(*a*) S. 64 of Dudley, Brierley Hill and District Gas Order, 1931.

(*b*) S. 23 of Wombwell Gas Order, 1931.

(*c*) S. 57 of Luton Gas Order, 1931.

(*d*) For the usual clause, see s. 51 of Luton Gas Order, 1931.

including the provision of working capital. The normal periods for the repayment of loans allowed by the M. of H. are as follows :

Cast iron mains	—	—	—	—	—	—	30 years.
Meters and stoves	—	—	—	—	—	—	10 years.
Station meters	—	—	—	—	—	—	20 years.
Steel mains untapped	—	—	—	—	—	—	30 years (e).
Gas holders	—	—	—	—	—	—	30 years.
Retorts—							
(1) Brickwork in benches and fittings	—	—	—	—	—	—	20 years.
(2) Vertical retorts—whole work	—	—	—	—	—	—	20 years.
Exhausters	—	—	—	—	—	—	20 years.
Condensers	—	—	—	—	—	—	30 years.
Service pipes	—	—	—	—	—	—	20 years.

It is usually provided in Gas Acts and orders that in order to secure the repayment of borrowed money, or interest thereon, the local authority may mortgage or charge the revenue of the undertaking and the general rate and the general rate fund either jointly or separately, but a common security is now available for all purposes of borrowing by a local authority under the L.G.A., 1933, and borrowings by a local authority for gas purposes are usually financed out of pooled funds raised under general powers (see titles BORROWING ; CONSOLIDATED LOANS FUND). It is the practice to grant local authorities power to re-borrow for the purpose of paying off money previously borrowed for the purposes of the gas undertaking or to replace money temporarily applied from other funds of the council to pay off money borrowed for gas purposes, but money which has been repaid by instalments or annual payments or by means of a sinking fund, or out of the proceeds of the sale of land, or out of any capital money properly applicable to the purpose of the repayment (other than money borrowed for that purpose), may not be replaced by re-borrowing. [391]

Reserve Fund of Local Authority.—Local authorities are generally authorised to form, if they so desire, a reserve fund which may not exceed one-tenth of the outstanding debt on the gas undertaking, by allocations from revenue. The object of the reserve fund is to meet (1) any deficiency at any time in the income from the gas undertaking or any extraordinary claim or demand arising in connection therewith, or (2) the cost of renewing or extending the works, or other cost incurred for the benefit of the gas undertaking. [392]

Accounts of Local Authority.—Local authorities are commonly placed under an obligation to keep separate accounts in respect of a gas undertaking, and also to distinguish capital from revenue. The revenue account must show on one side all receipts in respect of the gas undertaking including the interest on the securities of any reserve fund, and on the other side all payments and expenditure divided under the following heads : (i.) working and establishment expenses and costs of maintenance of the gas undertaking ; (ii.) interest on loans raised for gas purposes ; (iii.) the requisite appropriations, instalments or sinking fund payments in respect of loans raised for gas purposes ; (iv.) all other revenue expenses ; and (v.) the amount (if any) paid to the reserve fund.

(e) If the mains comply with the British Standard Specification and external protection is given either by double hessian wrapping or by asphalt covering in accordance with clause 31 of the British Standard Specification.

Any surplus on the revenue account may be applied in reduction of charges for gas, in redemption of debt on the undertaking or, unless restricted by the special Act or order, to the relief of the general rate.

The present practice of Parliament is opposed to an unrestricted policy of rate relief from the profits of trading undertakings, and where such contributions are permitted in modern Acts and orders they are limited to an amount not exceeding $1\frac{1}{2}$ per cent. of the outstanding debt on the undertaking, and this is payable only in cases where the amount standing to the credit of the reserve fund exceeds one-twentieth of such debt. This follows the restriction imposed generally on electricity profits in aid of rates by the Electricity (Supply) Act, 1926.

A deficiency on revenue account is in practice usually carried forward and met out of the surplus revenue of the gas undertaking for the following year, but otherwise it must be made good out of the general rate. [393]

Expenses of Local Authority.—Where a borough council or district council are authorised to supply gas to the public, expenses incurred under the Gas Undertakings Acts, 1920 to 1934, in connection with the gas undertaking are to be defrayed as part of the expenses of the gas undertaking (f). Expenses incurred by a county council under the Acts already mentioned are to be defrayed as payments for special county purposes, chargeable on those parts of the county for which the council have power, or would have power if they did not themselves supply gas to the public, to appoint a gas examiner, and expenses incurred under the Act of 1934 by any other local authority who are not authorised to supply gas are to be defrayed as expenses incurred in the administration of the P.H.As. (g).

Undertakers who are a borough council or district council may, with the consent of the Board of Trade, pay the reasonable expenses of attendance of any members of the council or of any officers employed in connection with the gas undertaking, at a conference or meeting convened by any association formed for the purpose of consultation as to the common interests of undertakers and the discussion of matters relating to the supply of gas, and may purchase the reports of the proceedings of such conference or meeting (h). [394]

Raising of Capital by Companies.—It has for many years been the practice of Parliament to require gas companies to offer all shares and stock for sale by auction or tender. Under the usual clause, notice of the intended sale must be given to the local authority and the Secretary of the Stock Exchange, at least fourteen days before the day of the auction, or the last day for receiving tenders: and the sale must also be advertised in the local press. If shares or stock are not sold in this manner, they may be offered at the reserve price to shareholders, consumers and employees of the company. It was the practice to provide that if the shares or stock remained unsold after having been offered as specified above, they were to be offered a second time for sale by public auction or by tender. Provisions of this type have been modified by sect. 1 of the Act of 1934 (i), sub-sect. (4) of

(f) Act of 1934, s. 29; 27 Statutes 325.

(g) Act of 1920, s. 20 and Act of 1934, s. 29; 8 Statutes 1291 and 27 Statutes 325.

(h) Act of 1934, s. 30; 27 Statutes 325.

(i) 27 Statutes 303.

which dispenses with any obligation imposed by an Act or order to offer shares and stock a second time for sale by public auction or tender, and enables the company to dispose of capital which has not been sold when first offered, in such manner as the directors think best with a view to obtaining the highest possible price. Sect. 1 (1) of the Act of 1934 (*ii*), further empowers the Board of Trade, on the application of a gas company, to authorise the offer of share capital for subscription by the public. Where capital of the company of the same class is officially quoted on the London Stock Exchange and has been dealt in within the twenty-eight days immediately preceding the application, the Board of Trade may not authorise the capital to be offered at a price less by more than 5 per cent. than the average price of the applicants' share capital of that class during that period. Where capital of the same class is not officially quoted on the London Stock Exchange, or has not been dealt in within the twenty-eight days immediately preceding the application, the Board of Trade must not authorise the capital to be offered for subscription by the public unless they are satisfied that the terms of the offer are the best obtainable by the applicants. Most of the recent special Acts authorise companies to offer in the first instance a portion of new issues of capital to consumers and employees. Any provision in any special Act or order which requires debenture stock to be offered by public auction or tender is repealed by sect. 2 of the Act of 1934 (*k*). [395]

Borrowing by Companies.—The amount of capital or loans which may be issued or raised by company undertakers is prescribed by the special Act or order relating to them. The Board of Trade may, however, by an ordinary order made under sect. 1 of the Gas Undertakings Act, 1929 (*l*), increase the amount of the authorised share capital, and allow the company to borrow by mortgage or by the creation and issue of debenture stock up to an amount not exceeding an amount equal to the paid-up share capital for the time being of the company and any premiums paid in respect thereof. The procedure to be followed on an application for such an order is governed by the Gas (Capital and Borrowing Powers) Rules, 1929 (*m*).

To such an order the consent of every local authority is necessary (*n*), and where the applicants have not, within the fifteen years preceding the date of the application, obtained either a special Act or a provisional or special order, the Board of Trade may not make an order increasing the capital or borrowing powers of the company, if any local authority in whose area a supply of gas is given by the company objects (*n*). In other cases the withholding of consent by any such local authority may be overruled by the Board of Trade, if they consider that a consent is unreasonably withheld (*n*).

Every gas company having statutory powers may, notwithstanding any provision in any enactment to the contrary, borrow up to an amount equal to one-half of the aggregate amount of the paid-up share capital for the time being of the undertaking and of any premiums paid in respect thereof (*o*).

(*ii*) 27 Statutes 303.

(*k*) *Ibid.*, 304.

(*l*) 8 Statutes 1293.

(*m*) S.R. & O., 1929, No. 454.

(*n*) Act of 1929, s. 1 (2), as amended by Second Schedule to the Act of 1934
27 Statutes 330.

(*o*) *Ibid.*, s. 2 ; 8 Statutes 1294.

Gas companies incorporated by Act of Parliament may issue redeemable preference and debenture stock subject to the provisions of sect. 4 of the Act of 1934 (p). [396]

Reserve and other Funds of Companies.—Special Acts and orders authorise the creation of certain funds by company undertakers. The nature of funds authorised differs according to the type of price and dividend control applicable to the company. Maximum price and dividend companies are normally permitted to establish only the reserve fund authorised by sect. 31 of the Gasworks Clauses Act, 1847 (q). The object of this fund is to pay up any back dividends which have fallen short of the authorised amount or to meet any extraordinary claims or demands which may arise against the company. This fund is limited to an amount not exceeding one-tenth of the aggregate amount of the paid-up share capital of the company, of any premiums paid in respect thereof, and of any outstanding loans (r). Sliding scale and basic price companies are authorised to maintain from revenue: (1) the special purposes fund; (2) the renewals fund; and (3) the reserve fund. The object of the first fund is to meet such charges as an accountant appointed by the Board of Trade may approve as being due to accidents, strikes or other circumstances, which due care and management could not have prevented, or as being incurred in the replacement or removal of plant or works other than expenses requisite for maintenance and renewal of plant and works. The annual maximum permissible allocation to this fund is usually 1 per cent. of the aggregate amount of the paid-up share capital of the undertaking, of any premiums paid in respect thereof, and of any outstanding loans (s). The maximum amount which may at any time stand to the credit of the fund is 10 per cent. of the same aggregate amount. [397]

The renewals fund is for the purpose of meeting expenses requisite for the maintenance and renewal of plant and works (other than expenses incurred in the replacement or renewal of plant and works). The allocations which may be made annually from revenue to this fund may not exceed one-half per cent. of the capital of the company and the amount of the fund may not exceed 5 per cent. of such capital, unless larger amounts are authorised by any enactments relating to the company (t). For this purpose the term "capital" means the aggregate amount of the (i.) paid-up share capital of the company, created and issued for the purpose of their gas undertaking and not redeemed, (ii.) premiums paid in respect of the share capital created and issued for that purpose, and (iii.) of any sums which have been raised by the company for the said purposes on mortgage or by the creation and issue of debenture stock and have not been paid off (t).

The reserve fund consists of allocations from the divisible profits and may be utilised to augment dividends where the profits of the company are not sufficient to permit the payment of the authorised rate of dividend. In certain cases the fund is authorised to be utilised to make up dividends to the standard rate although gas may have been supplied at a price in excess of the standard price. In the case of

(p) 27 Statutes 305.

(q) 8 Statutes 1226.

(r) Act of 1929, s. 3 (1) (8 Statutes 1294), as amended by Second Schedule to Act of 1934 (27 Statutes 330).

(s) *Ibid.*, s. 3 (2), as also amended.

(t) Act of 1934, s. 5; 27 Statutes 306.

a sliding scale company it is usual to limit the amount which the company may in any year carry forward. [398]

Price and Dividend Limitation.—Gas Acts and orders applicable to local authority undertakings normally incorporate price-limiting provisions either by the prescription of a maximum price, or by the requirement that the price to be charged for gas shall be fixed at such an amount as will meet the cost of manufacture and distribution with other consequential expenditure.

With regard to companies there are three principal methods of price and dividend control : (1) the prescription of a maximum price and a maximum dividend ; (2) sliding scale provisions in accordance with which a standard price of gas and a standard dividend are prescribed. The rate of dividend which may be paid may exceed the standard dividend if the price of gas charged during a prescribed period has not exceeded the standard price, but where the price charged has been in any case above the standard during the period, a dividend correspondingly below the standard dividend must be distributed ; (3) basic price provisions in accordance with which a basic price of gas and a basic dividend are prescribed. The company may increase or reduce the price of gas above or below the basic price, but may not pay a dividend above the basic dividend unless the conditions stated below are complied with. [399]

At the end of each year or half-year, a sum is to be calculated to represent the difference between the total amount payable by consumers during the period and the total amount which would have been received by the company if gas had been supplied at the basic price. The directors are, if they think fit, permitted to distribute an amount equal to a prescribed proportion (usually one-third) of this sum in equal parts to shareholders (in the form of an increase in dividend beyond the basic rate of dividend) and the co-partners of the company (if any). Basic price provisions although conforming to the general principle stated above differ considerably in detail. The original basic price provisions are those contained in the sects. of the South Metropolitan Gas Act, 1920 (*u*). By sect. 39 (2) of the South Suburban Gas Act, 1928 (*a*), the payment in excess of the basic dividend or the allocation of any sums to the co-partners was prohibited, if during the prescribed period the price charged to the ordinary consumer had been equal to or in excess of the basic price. A similar provision was inserted in all special Acts or orders containing basic price provisions until 1933, and has rendered it impossible for companies to which it applied to charge for gas on a two-part basis, or on a low flat-rate basis subject to a minimum periodic charge, since such charges might detrimentally affect the amount of the dividend which would otherwise be payable by the company. This defect has to some extent been remedied by sect. 6 of the Gas Undertakings Act, 1934 (*b*), which follows a recommendation of the Gas Legislation Committee (*c*), and is free from the restriction contained in the South Suburban Gas Act, 1928. The intention of the section is to limit the amount of dividend, above the basic rate of dividend, which may be paid by a company which, while maintaining a high price to the ordinary consumer,

(*u*) 10 & 11 Geo. 5, c. lxxi.

(*a*) 18 & 19 Geo. 5, c. lxxx.

(*b*) 27 Statutes 307.

(*c*) See Second Interim Report of Gas Legislation Committee 4237, p. 15.

supplies large quantities of gas for industrial purposes subject to heavy discounts. [400]

Under sect. 47 of the Southampton Gas Order, 1933 (*d*), the amount of dividend which may be distributed above the basic dividend is computed as follows :

- (1) A calculation is made of the sum representing the amount (if any) by which the total amount payable to the company, during the prescribed period, for gas supplied at a price per therm equal to or exceeding seven-tenths of the ordinary price, is less than the amount which would have been payable if gas had been supplied at the basic rate.
- (2) A similar calculation is made in relation to gas supplied to consumers during the same period at a price less than seven-tenths but not less than three-fifths of the ordinary price.
- (3) A similar calculation is made in relation to gas supplied to consumers during the same period at a price less than three-fifths but not less than one-half of the ordinary price.
- (4) A similar calculation in relation to gas supplied to consumers during the same period at a price less than one-half of the ordinary price.

The sum which may be divided between the shareholders and the co-partners is an amount equal to the aggregate of (i.) one-third of the sum calculated under para. 1 (above); (ii.) one-fourth of the sum under para. 2; (iii.) one-sixth of the sum under para. 3; and (iv.) one-twelfth of the sum under para. 4.

The practical application of the principle of sect. 47 of the Southampton Order may be illustrated by the following example (the figures being approximate) :

Total sale of gas	-	-	-	-	1 million therms.
The ordinary price	-	-	-	-	8 <i>d.</i> per therm.

- (a) 700,000 therms sold at prices varying between 8*d.* per therm (the ordinary price) and 5·6*d.* per therm (*i.e.* seven-tenths of the ordinary price) at an average price of 7·6*d.* per therm realised a revenue of $7\cdot6 \times 700,000 = 5,320,000*d.*$ This is 280,000*d.* less than the revenue which would have been obtained if all the 700,000 therms had been sold at the ordinary price, *i.e.* 8*d.* per therm.
- (b) 150,000 therms sold at prices less than 5·6*d.* per therm and not less than 4·8*d.* per therm (*i.e.* three-fifths of the ordinary price) at an average price of 5*d.* per therm, realised a revenue of 750,000 pence. This is 450,000*d.* less than the revenue which would have been obtained if all the 150,000 therms had been sold at the ordinary price, *i.e.* 8*d.* per therm.
- (c) 100,000 therms sold at prices less than 4·8*d.* per therm and not less than 4·0*d.* per therm at an average price of 4·5*d.* per therm, realised a revenue of 450,000 pence. This is 350,000*d.* less than the revenue which would have been obtained if all the 100,000 therms had been sold at the ordinary price, *i.e.* 8*d.* per therm.
- (d) 50,000 therms sold at prices less than 4*d.* per therm realised in the aggregate 175,000*d.* This is 225,000*d.* less than the

revenue which would have been obtained if all the 50,000 therms had been sold at the ordinary price, *i.e.* 8*d.* per therm.

The maximum amount which may be distributed in equal shares between the shareholders and the co-partners is therefore the aggregate of :

$$\begin{aligned} \frac{1}{5} \times 280,000*d.*, \text{ see (a) } &= 93,333*d.* \\ \frac{1}{4} \times 450,000*d.*, \text{ see (b) } &= 112,500*d.* \\ \frac{1}{6} \times 350,000*d.*, \text{ see (c) } &= 58,333*d.* \\ \frac{1}{12} \times 225,000*d.*, \text{ see (d) } &= 18,750*d.* \end{aligned}$$

[Total 282,916*d.*

or approximately £1180. [401]

Accounts and Returns.—All undertakers must furnish to the Board of Trade an annual account, and within seven days of so doing must send a copy of it to every local authority and must place copies on sale at their principal office at a price not exceeding 1*s.* a copy (*e*). Undertakers who fail to comply with these provisions are liable on summary conviction to a fine not exceeding 40*s.* for each day during which the default continues. The form of accounts contained in the Schedule to the Gasworks Clauses Act, 1871, need no longer be followed, but no other form has at present been prescribed. The Board of Trade may require different statistics and returns from different undertakers and may require any particular statistics and returns to be certified by the auditor of the undertakers (*f*). [402]

Powers of Investment.—All gas undertakers, whether companies or local authorities, are entitled to lend money on mortgage to, and subscribe for, acquire, hold and dispose of any securities of any local authority or company carrying on or about to carry on, in the United Kingdom, any process or operation of the same or substantially the same character as those which the undertakers are, as such, authorised to carry on (*g*). No such investment may be made by a local authority without the consent of the Board of Trade, and the aggregate of such investments may not exceed one-tenth of the capital for the time being expended by the authority in connection with their gas undertaking (*h*). The investments which may be made by a company may not exceed one-twentieth (or with the consent of the Board of Trade one-tenth) of the aggregate of the authorised share and loan capital for the time being of the company (*h*), and if the company is registered the investment must not be in conflict with their memorandum and articles of association.

Undertakers who in any calendar year have supplied 250 million cubic feet of gas or more may, subject to the conditions specified above, exercise similar powers in respect of the securities of any company or local authority, engaged or about to be engaged, in any part of the United Kingdom, solely in developing inventions or processes calculated to improve the manufacture or distribution of gas or the utilisation of

(*e*) Act of 1920, s. 15 (8 Statutes 1290), as amended by Second Schedule to Act of 1934 (27 Statutes 330).

(*f*) Act of 1934, s. 16 ; 27 Statutes 317.

(*g*) Act of 1932, s. 1 (1) ; 25 Statutes 187.

(*h*) *Ibid.*, proviso (1).

residual products arising from the manufacture of gas (*i*). For the purpose of making such investments local authorities may, with the sanction of the M. of H. (given with the concurrence of the Board of Trade), borrow such sums as may be approved not exceeding in the aggregate one-tenth part of the capital for the time being expended by the undertakers in connection with their gas undertaking (*k*). Where such investments are disposed of, the capital sums received by a local authority are to be applied (except where used for the purchase of other securities in accordance with the Gas Undertakings Act, 1932), in such manner as may be directed by the M. of H. In the case of companies, capital sums so received, if not reinvested in accordance with the Act, are to be credited to capital account (*l*). [403]

THE THERMAL SYSTEM OF CHARGE

The Gas Regulation Act, 1920, by sect. 1 (*m*), provided for the substitution of the thermal for the volumetric system as the normal basis of charge for statutory undertakers. Under the thermal system the charge for gas is based upon the number of thermal units contained in the gas. A thermal unit is the quantity of heat required to raise the temperature of 1 lb. of water 1° Fahrenheit, and a therm is defined to mean 100,000 British Thermal Units (B.T.U.) (*n*). The right to charge for gas according to the number of B.T.U.s. contained therein is restricted to undertakers authorised so to do by an order made under sect. 1 of the Act of 1920 or by special Act of Parliament (*o*).

The Board of Trade may make orders (known as charges orders) for the purpose of repealing any enactment or other provision requiring undertakers to supply gas of any particular illuminating or calorific value and substituting power to charge for the thermal units therein (*p*). Such orders may also provide for the substitution of a maximum or standard price per therm for a maximum or standard price per 1,000 cubic feet (*q*). The thermal maximum or standard price must correspond as nearly as may be with the volumetric maximum or standard price, but the Board of Trade may make such additions as appear to be reasonably required in order to meet any increases which have occurred since June 30, 1914, in the costs and charges of and incidental to production and supply, and which are due to circumstances beyond the control of the undertakers or which could not reasonably have been avoided by them (*r*). [404]

The Board of Trade are also empowered (*r*) to make orders amending a charges order on the application of the gas undertakers or of any local authority (*s*), or (where the local authority are themselves the

(*i*) Act of 1932, s. 1 (1) (b) and proviso (ii.) ; 25 Statutes 187.

(*k*) *Ibid.*, s. 2 ; 25 Statutes 188.

(*l*) *Ibid.*, s. 3.

(*m*) 8 Statutes 1279.

(*n*) Act of 1920, s. 1 (2) ; 8 Statutes 1279.

(*o*) *Ibid.*, s. 3.

(*p*) *Ibid.*, s. 1 (1). As to procedure to obtain a charges order, see The Gas (Charges Orders) Rules, 1922, S.R. & O., 1922, No. 380.

(*q*) *Ibid.*, s. 1 (2) ; 8 Statutes 1279.

(*r*) *Ibid.*, s. 1 (3).

(*s*) The expression "local authority" means the Common Council of the City of London and any county, borough or U.D. Council, and in relation to any gas undertaking means any such local authority the whole or any part of whose area is within or partly within the limits of supply of the undertakers ; see Act of 1920, s. 18 ; 8 Statutes 1290.

undertakers) of twenty consumers (*t*). It is necessary for the applicants for an amending order to show that the costs and charges of and incidental to the production and supply of gas have substantially altered from circumstances beyond the control of, or which could not reasonably have been avoided by, the undertakers.

By the Schedule to the Act of 1929 (*u*), the Board of Trade may also make an amending order for the purpose of securing that the undertakers shall not be prejudiced by an increase or decrease since June 30, 1914, in (1) the rate of interest which the undertakers are obliged to pay on capital raised or money borrowed for the purposes of their undertaking; or (2) the cost to the undertakers of providing works, plant or apparatus for the supply of gas; or (3) the annual output of their undertaking; or (4) the efficiency with which the undertaking has been carried on. [405]

Prescriptions.—Thermal unit undertakers (*a*) are subject to tests to be made at the places and times and by the apparatus and methods laid down in respect of those undertakers by special prescriptions. Such prescriptions will be made by the gas referees (*b*) until January 1, 1939, when the office of gas referee is abolished and the functions formerly attached to that office are transferred to the Board of Trade (*c*). The prescribed apparatus must, where undertakers have sold in the preceding year more than 5,000,000 therms in the form of gas, and in other cases where it appears necessary, include a continuous-recording calorimeter (*d*).

A representative of the undertakers may be present at the making of each test, and the gas referees may, at any time where it appears to them necessary for the proper execution of their duties, enter upon and inspect the works (*e*).

After January 1, 1939, undertakers or a local authority considering themselves aggrieved by any prescription of the Board of Trade under sect. 5, may, within twenty-one days of the prescription, give notice to the Board of Trade, who must either modify the prescription to the satisfaction of the objectors, or refer the objection to the arbitration of a competent and impartial person appointed by the Lord Chancellor, who must consider any written representations of the objectors or the Board of Trade, and must hear the parties, if requested (*f*). [406]

Tests.—The object of the tests prescribed by the special prescriptions is to ensure that the gas supplied by the undertakers is of the declared calorific value (except where gas is supplied separately for industrial purposes only), does not contain any trace of sulphuretted hydrogen, and is supplied at not less than such pressure in every main,

(*t*) As to procedure, see The Gas (Amending Orders) Rules, 1923; S.R. & O., 1923, No. 439.

(*u*) 8 Statutes 1298.

(*a*) "Thermal unit undertakers" means undertakers who are authorised by any enactment to charge for gas according to the number of British thermal units supplied; see s. 32 of Act of 1934; 27 Statutes 326.

(*b*) Act of 1920, s. 5 (1); 8 Statutes 1283.

(*c*) Act of 1934, s. 12; 27 Statutes 313.

(*d*) Act of 1920, s. 5 (2) (8 Statutes 1284), as amended by Second Schedule to Act of 1934 (27 Statutes 329).

(*e*) *Ibid.*, s. 5 (5); 8 Statutes 1284.

(*f*) See sub-s. (7) of the new s. 5 to be substituted after January 1, 1939, set out in Part III. of Second Schedule to Act of 1934; 27 Statutes 332.

or in any pipe having an internal diameter of two inches and upwards laid between any main and the meter, as to balance a column of water not less than two inches in height (*g*). [407]

Gas Examiners.—Any local authority (*h*) not themselves gas undertakers, may appoint a gas examiner to test the gas within their area, and two or more local authorities, who do not themselves supply gas to the public, may make an agreement for the joint appointment and employment of a gas examiner for the areas of all those authorities (*i*). For the appointment of a gas examiner, the area of a county council does not include any urban district or non-county borough within the county unless the council of that district or borough themselves supply gas to the public (*k*).

Quarter sessions, on the application of not less than five consumers of gas within the area of a local authority (whether that local authority are or are not themselves gas undertakers), may appoint a gas examiner for the area, if such an examiner has not been appointed or if they are satisfied that the testing of gas in the area has been imperfectly attended to (*l*). The remuneration and expenses of a gas examiner appointed by quarter sessions, up to an amount approved by quarter sessions, is to be paid by the local authority in respect of whose area the examiner is appointed (*m*). [408]

Penalties.—Undertakers who fail to comply with the prescriptions of the gas referees (or after January 1, 1939, of the Board of Trade), or to provide the necessary testing places and apparatus, or to give access to the testing places and works in accordance with the Gas Regulation Act, 1920, or to furnish information required to be furnished by that Act, are liable on summary conviction to a penalty not exceeding £25, and in the case of a continuing offence £25 for each day after conviction during which such offence continues (*n*). After January 1, 1939, the penalty for a continuing offence will be a fine not exceeding £5 for each day during which the default continues (*o*). [409]

Appeals from Reports of Gas Examiners.—Undertakers may appeal from the report of a gas examiner, within twenty-one days of the making of the report, to the Board of Trade who are to appoint a competent and impartial person to hear the appeal and whose decision is final and conclusive (*p*). [410]

Calorific Value.—Where a continuous record of calorific value is kept, and it is found that the calorific value of the gas is for a period of two hours and upwards more than 5 per cent. below the declared calorific value, the undertakers are liable on summary conviction to a forfeiture not exceeding £5 for every complete 1 per cent. by which the calorific value is deficient in excess of 5 per cent. of the declared value (*q*). Where no continuous record of calorific value is kept and

(*g*) Act of 1920, s. 2 (2); 8 Statutes 1282.

(*h*) See definition in note (*s*), *ante*, p. 192.

(*i*) Act of 1934, s. 13; 27 Statutes 314.

(*k*) *Ibid.*, s. 13 (6); 27 Statutes 315.

(*l*) *Ibid.*, s. 13 (2); 27 Statutes 314.

(*m*) *Ibid.*, s. 13 (4).

(*n*) Act of 1920, s. 8; 8 Statutes 1285.

(*o*) See new s. 8 in Part III. of Second Schedule to Act of 1934; 27 Statutes 333.

(*p*) Act of 1934, s. 12 (1) (27 Statutes 313); Act of 1920, s. 6 (2) (8 Statutes 1284), as amended by Acts of 1929 and 1934.

(*q*) Act of 1920, s. 9; 8 Statutes 1286. On January 1, 1939, a new s. 9 will come into operation; see Part III. of Second Schedule to Act of 1934.

it is found as a result of a test that the calorific value of the gas supply is more than 5 per cent. below the declared calorific value, a second test is to be made after an interval of not less than one hour, and the mean of the two tests is to be regarded as the calorific value of the gas supplied (*ibid.*). [411]

Where the average calorific value for any quarter is below the declared calorific value, the Board of Trade determine under sect. 14 of the Act of 1934 (*r*), the sum by which the revenue of the undertakers has been improperly increased (known as the excess revenue). No quarterly average may, however, be determined unless it is based upon not less than six tests made during the quarter, and where gas supplied to a testing station from one main is tested for the purpose of ascertaining the calorific value in two or more examination areas (*s*), the reports of all these tests must be taken into account in ascertaining the average calorific value of the gas supplied in each of these areas (*t*).

Where the excess revenue, when divided by the number of therms supplied by the undertakers in the examination area in the following quarter, produces a sum less than one-fifth of a penny, a sum equal to the excess revenue is to be paid to the gas fund in the next following year, unless the mean of the average calorific values of the quarter and the last preceding quarter was equal to or greater than the declared calorific value (*u*). Where the excess revenue when divided by the number of therms in question produces a sum not less than one-fifth of a penny, the undertakers must allow to each consumer in that examination area, who is a consumer at the end of the following quarter, in respect of each therm supplied to him, a credit of one-fifth of a penny, or, where the sum so produced is not less than two-fifths of a penny, a credit equal to such simple multiple of one-fifth of a penny as most nearly approximates to without exceeding the sum so produced. The difference (if any) between the sum so produced and the aggregate amount of such credits must then be paid into the gas fund (*a*). [412]

Purity and Pressure.—Thermal unit undertakers are also liable to a forfeiture not exceeding £10 where the gas supplied does not conform to the provisions of the Gas Regulation Act, 1920, or any order made thereunder, as to the standard of purity and pressure (*b*). [413]

Exemption from Penalties.—No undertakers are, however, liable to be penalised in respect of deficiencies in calorific value, purity or pressure if such deficiencies are due to circumstances beyond their control: and in no case are undertakers liable to more than one penalty in respect of any one day for any deficiency in calorific value, composition or pressure of gas supplied from any one works (*c*). [414]

Power to Compel Supply by Thermal System.—The Board of Trade may at any time after August 4, 1922, make a charges order in respect of any statutory undertakers who did not apply for such an order before

(*r*) 27 Statutes 315.

(*s*) The examination area means the area of any local authority for which a gas examiner is appointed either by that local authority or by quarter sessions; see s. 14 (6) of Act of 1934; 27 Statutes 316.

(*t*) Act of 1934, s. 14 (2), provisos; 27 Statutes 316.

(*u*) *Ibid.*, s. 14 (1) (*a*).

(*a*) *Ibid.*, s. 14 (1) (*b*).

(*b*) Act of 1920, s. 9 (2); 8 Statutes 1286.

(*c*) *Ibid.*, s. 9 (3).

that date (*d*). The order may be made after giving not less than three months' notice to the undertakers and is to have the same effect as a charges order made on their application. It is believed that the Board have not exercised this power.

Sect. 6 of the Gas Undertakings Act, 1929 (*e*), provides that any statutory undertakers who were not by special Act or order authorised to charge for gas on the thermal basis, and who had in any year subsequent to 1927 supplied more than twenty million cubic feet of gas should after "the appointed day" charge according to the number of therms supplied, subject to the provisions of any special order.

The "appointed day" with respect to undertakers who in 1928 supplied more than twenty million cubic feet of gas, is to be such a day not later than April 1, 1930, as the Board of Trade might by order prescribe, and with regard to other undertakers January 1 in the second year after the year in which they first supplied more than that amount (*f*). Where, however, the Board of Trade are satisfied that the undertakers would not have supplied more than twenty million cubic feet of gas in the year if they had not purchased some other undertaking during that year, the appointed day is to be fixed by the Board of Trade (*g*). The standard or maximum price of such undertakers is after the appointed day to be converted into a price per therm by dividing by five the maximum or standard price per 1,000 cubic feet authorised immediately before the appointed day (*h*), unless the undertakers obtain a special order authorising some other maximum or standard price per therm (*i*). The Board of Trade are to make an order in respect of such undertakings containing similar provisions to those which are to be inserted in charges orders, and the requirements of the Act of 1920 regarding the testing of gas and the imposition of penalties (*k*) will be applicable to the undertakers (*l*). [415]

Charges under Special Contracts.—Undertakers are authorised by sect. 13 of the Gasworks Clauses Act, 1847 (*m*), to enter into contracts for lighting or supplying with gas any public or private building, or any premises, or for providing any person with pipes, burners, meters and lamps. Undertakers may also contract with the persons having the control of the streets within their limits for lighting any of them with gas, and for the provision of lamps, lamp posts, burners and pipes for this purpose, and for their repair in such manner and on such terms as may be agreed (*n*). But the terms of every contract made under sect. 13 of the Act of 1847 in the like circumstances and for the same purposes must be alike (*o*). Such contracts are, unless special contracts under sect. 6 of the Act of 1934, subject to price and dividend limitations. It is, therefore, impossible for undertakers to offer to charge their consumers on a two part basis or at a low flat rate subject to a minimum or periodical payment otherwise than in accordance with the provisions of sect. 6, since, in the case of a maximum price company, such contracts might lead to the infringement of the

(*d*) Act of 1920, s. 1 (5); 8 Statutes 1281.

(*e*) 8 Statutes 1295.

(*f*) Act of 1929, s. 6 (5); 8 Statutes 1296.

(*g*) Act of 1934, Sched. II., Part I.; 27 Statutes 331.

(*h*) Act of 1929, s. 6 (1); 8 Statutes 1295.

(*i*) *Ibid.*, as amended by Act of 1934, Sched. II., Part I.; 27 Statutes 331.

(*k*) *I.e.* ss. 2, 5—7, 9.

(*l*) Act of 1929, s. 6 (2), (3); 8 Statutes 1296.

(*m*) 8 Statutes 1221; as amended by s. 7 of the Act of 1934; 27 Statutes 309.

(*n*) Act of 1847, s. 13; 8 Statutes 1221.

(*o*) Act of 1934, s. 7 (1) (b); 27 Statutes 309.

maximum price provisions, and, in the case of a sliding scale or basic price company, might detrimentally affect the amount of dividend payable. Sect. 6 of the Act of 1934 provided a means whereby undertakers can make special contracts with their consumers without the risk of the infringement of price-limiting provisions or of affecting adversely the amount of dividend which may legally be paid. Under sect. 6 (1) undertakers may, if they so desire, give a notice in writing of the price per therm (known as the published price) at which they are prepared for the time being to supply gas to persons who are, in virtue of sect. 11 of the Gasworks Clauses Act, 1871 (*p*), entitled to demand a supply and who are not willing to enter into a special contract. [416]

Such a notice must be given by the undertakers (except where they are a county council or county borough council) to the council of any county, borough or urban district the whole or any part of whose area is within or partly within the limits of supply of the undertakers. Where the undertakers are the council of a county or county borough, the notice is given to the Board of Trade, in addition to the local authorities of any area outside the county borough which are supplied by those undertakers (*q*).

The published price must be a uniform price per therm, unless the undertakers are under an obligation or are authorised and propose to charge a different price in different areas, in which case the different price must be stated in the notice given to the local authorities of these areas (*r*). No discount may be allowed from the published price except a discount for prompt payment (*s*). Where a notice of a published price has been given, special contracts for the supply of gas at prices other than the published price may be made, and the charges agreed under such special contracts will not be taken into account for the purpose of maximum price, sliding scale or basic price provisions or in respect of any provision applicable to the undertakers which prescribes or limits the price for public lighting or requires the undertakers to impose a differential price for gas (*t*). In the case of basic price and dividend companies who work under provisions similar to those contained in the South Suburban Gas Act, 1928 (*a*), the charges made to consumers under special contracts, while not taken into account for the purpose of ascertaining whether a dividend in excess of the basic dividend may be paid, will nevertheless be included for the purpose of estimating the difference between the revenue actually received by the company from the supply of gas and the revenue which would have been received if gas had been supplied at the basic rate. [417]

Charge for Stand-by Supply.—Where gas is used for stand-by purposes in any premises having a separate supply of gas, or having a supply of electricity, steam or other form of energy in use or ready for use for the purpose for which the stand-by supply of gas is required, the undertakers may demand an annual sum in addition to the charge for gas (*b*). The annual sum should be sufficient to give a reasonable return on the capital expended in giving a stand-by supply and to cover other standing charges necessary to meet the possible maximum demand from the premises. Any questions arising with regard to the payment of an annual sum in respect of a stand-by supply are, in default of agreement, to be settled by arbitration (*b*). [418]

(*p*) 8 Statutes 1265.

(*r*) *Ibid.*, s. 6 (1), (2); *ibid.*, 307.

(*t*) *Ibid.*, s. 6 (3) (d).

(*b*) Act of 1934, s. 24; 27 Statutes 321.

(*q*) Act of 1934, s. 6 (4); 27 Statutes 309.

(*s*) *Ibid.*, s. 6 (3) (a); *ibid.*, 308.

(*a*) 18 & 19 Geo. 5, c. lxxx.

NON-STATUTORY UNDERTAKERS

Conversion to Statutory Undertakers.—Non-statutory undertakers are companies, bodies or persons who, though not authorised by any enactment (other than the P.H.A., 1875), to supply gas, are engaged in supplying gas to the public, and for that purpose make use of pipes or mains laid in any highway (c).

Where non-statutory undertakers have in 1934 or in any subsequent calendar year supplied more than thirty million cubic feet of gas, the Board of Trade are to serve a notice, before the expiration of the two next following years, requiring them to apply for a special order under sect. 10 of the Act of 1920, which will convert the undertaking into a statutory undertaking (d). No such notice is, however, to be served before January 1, 1936: and the Board of Trade are under no obligation to serve such a notice before January 1, 1938.

A special order made in respect of non-statutory undertakers upon whom such a notice has been served is to prescribe specified limits for the manufacture and supply of gas, incorporate the Gasworks Clauses Acts, 1847 and 1871, require charges to be made according to the number of British thermal units supplied and regulate prices, and also, in the case of companies, their capital and the dividends payable (e).

After January 1, 1939, a local authority may apply to the Board of Trade to serve a similar notice upon any non-statutory undertakers who supply gas within their area on the grounds that those undertakers have in the year preceding the application supplied more than twenty million cubic feet of gas, that the supply was insufficient or otherwise unsatisfactory, and that at the date of the application no sufficient steps have been taken to remedy the matter (f). Where non-statutory undertakers fail to comply with the requirements of the notice, the Board of Trade are themselves to prepare a draft order and forward it to the undertakers (g).

After January 1, 1939, all non-statutory undertakers (whatever quantity of gas is supplied by them) will be under an obligation to supply gas at such pressure in every main and in every pipe laid between the main and the meter having an internal diameter of two inches and upwards, as to balance a column of water not less than two inches in height (h).

Non-statutory undertakers who have in any year since January 1, 1934, supplied more than twenty million cubic feet of gas must after January 1, 1939, supply gas free from any trace of sulphuretted hydrogen (i). Where such undertakers supplied more than twenty million cubic feet of gas in any year after 1939 they will be subject to tests for purity at the end of the first year after the year in which they first supplied that amount (h).

No gas supplied by non-thermal unit undertakers is to be tested before January 1, 1939, or more often than once in each quarter (i).

Where, however, non-statutory undertakers carry on two or more gas undertakings which are not connected with each other by pipes, the gas supplied by the several undertakings is to be deemed to be supplied by different undertakers (k). [419]

Annual Returns.—Before March 1 in each year all non-statutory

(c) Act of 1934, s. 32; 27 Statutes 326.

(e) *Ibid.*, s. 9 (3); *ibid.*, 311.

(g) *Ibid.*, s. 9 (4); 27 Statutes 311.

(i) *Ibid.*, s. 13 (5); *ibid.*, 314.

(d) *Ibid.*, s. 9 (1); *ibid.*, 310.

(f) *Ibid.*, s. 9 (2).

(h) *Ibid.*, s. 10; *ibid.*, 312.

(k) *Ibid.*, s. 32 (4); *ibid.*, 327.

undertakers must furnish the Board of Trade with returns showing the quantity of gas supplied by them during the preceding year (*l*). Within seven days of the date upon which this return is furnished to the Board of Trade, two copies must be supplied to every local authority within whose area the non-statutory undertakers supply gas, and one of the copies so supplied is to be open to public inspection at all reasonable times (*l*). [420]

LOCAL AUTHORITIES IN RELATION TO GAS UNDERTAKERS

For the right of a local authority to object to special orders, see *ante*, p. 177. As to the appointment of a gas examiner by a local authority, see *ante*, p. 194.

As Highway Authorities.—The widening or reconstruction of streets by highway authorities frequently involves alterations of sub-surface works. For instance, on a street widening, the footpath may be thrown into the carriageway, with the result that gas mains originally laid under the footway will become subject to the full weight of the traffic using the carriageway. In other instances, the level of the highway is lowered in such a way as to render inadequate the cover over the mains and pipes.

In such cases it is the normal practice to remove the sub-surface works to a more satisfactory position, and such removal is to be regarded as a necessary and ancillary part of highway reconstruction.

Where the highway authority are a county council the terms and conditions governing such a removal are frequently to be found in protective clauses included in a local Act authorising the street improvement. The latest form of protective clause provides that if in the opinion of the gas undertakers the removal of mains and cables is, owing to highway work authorised by the local Act, reasonably necessary, the undertakers may require the highway authority to carry out such work and to pay the cost of it (*m*).

Where borough councils or urban district councils exercise highway powers under the P.H.A., 1875, they may serve upon the owners of gas and water mains and pipes a notice in writing to raise, sink or otherwise alter the situation of these mains and pipes, and where such a notice is served the expense of removal is to be borne by the council (*n*). The council are, however, under an obligation to pay full compensation to any person who sustains any damage by reason of the exercise of any of the powers conferred upon them by the P.H.A., 1875 (*nn*). They need not, however, serve such a notice unless the alteration is required for the proper carrying out of their highway powers (*o*).

Where under the L.G.A., 1929, a highway formerly vested in a borough or district council is transferred to a county council, public utility undertakers may prefer any claim for compensation against the county council which before the transfer could have been made against the borough or district council under sect. 308 of the Act of 1875 (*p*). [421]

(*l*) Act of 1934, s. 11 ; 27 Statutes 313.

(*m*) Among many recent precedents for clauses of this kind, the following may be mentioned ; s. 152 of Exeter Corp'n. Act, 1928 (c. xlviii.) ; s. 24 of Cardiff Corp'n. Act, 1930 (c. clxxiv.) ; s. 129 of Surrey County Council Act, 1931 (c. ci.) ; s. 23 of L.C.C. (General Powers) Act, 1929 (c. lxxxvii.).

(*n*) P.H.A., 1875, s. 153 ; 13 Statutes 688.

(*nn*) *Ibid.*, s. 308 ; 13 Statutes 755.

(*o*) *Southwark and Vauxhall Water Co. v. Wandsworth District Board of Works*, [1898] 2 Ch. 603 ; 26 Digest 488, 1997.

(*p*) L.G.A., 1929, s. 39 ; 10 Statutes 913.

As Housing Authorities.—Following precedents to be found in several local Acts (*q*), sect. 27 of the Gas Undertakings Act, 1934 (*r*), renders it unlawful after June 28, 1934, for a local authority to insert or procure to be inserted in any instrument in connection with the sale or letting of any premises which are owned by them or in which they have an interest and which are situated in the limits of supply of company undertakers having statutory powers, a provision restricting the right of any owner or occupier of the premises to take a supply of gas from those undertakers.

For this purpose, any provision which would have the effect, in the event of the owner or occupier taking a supply of gas, of imposing upon him obligations to which he would not otherwise be subject, or of taking away from him rights which he would otherwise enjoy, are to be regarded as provisions restricting his right to take a supply of gas (*s*).

Any provisions inserted in an instrument which are in contravention of sect. 27 are to be void, and the gas undertakers concerned may take civil proceedings to restrain the contravention of the section by a local authority or for a declaration that any provision inserted in an instrument is void.

By sect. 91 of the Housing Act, 1935, a local authority is given power to execute works for the removal or alteration of apparatus (*t*) belonging to statutory undertakers (*t*), where it is reasonably necessary for the exercise of the local authority's powers under Part I. of the Housing Act, 1930 (*u*), and Part I. of the Act of 1935. Provision is made for the service of notice and the ascertainment of compensation.

[422]

LONDON

London is supplied with gas mainly by three companies, viz. the Commercial Gas Co. the Gas Light and Coke Co. and the South Metropolitan Gas Co.; but the Wandsworth and District Gas Co. and the South Suburban Gas Co. also supply gas in parts of London. These companies have their own special Acts. Reference may also be made to the Metropolis Gas Act, 1860 (*uu*), the Metropolis Gas Act, 1861 (*a*), the City of London Gas Act, 1868, the Gas Light and Coke and other Gas Companies Acts (Amendment) Act, 1880, the Metropolis Gas (Prepayment Meter) Act, 1900, and the London Gas Act, 1905. [423]

The local authorities in London are concerned in gas supply from the following points of view :

Street Lighting.—The borough councils are required by sect. 130 of the Metropolis Management Act, 1855 (*b*), to cause the several streets within their areas to be well and sufficiently lighted, and for that purpose to maintain or to set up and maintain a sufficient number of lamps in every such street and cause the same to be lighted with gas or otherwise. [424]

Laying of Pipes.—As to this, see *ante*, p. 179.

Protection of Water Supply.—There are special conditions for the prevention of the contamination by gas of the water supply in addition to and partly in substitution for those in sects. 21 to 29 of the Gasworks Clauses Act, 1847 (*c*); see title METROPOLITAN WATER BOARD. [425]

(*q*) See e.g. the Kettering Gas Act, 1932; the Gas Light and Coke Act, 1933; the Commercial Gas Company Act, 1933; the Brighton, Hove and Worthing Gas Company Act, 1934; and the South Metropolitan Gas Act, 1934.

(*r*) 27 Statutes 324.

(*s*) Act of 1934, s. 27 (2).

(*t*) Defined in s. 97 of the Act.

(*u*) 23 Statutes 396.

(*uu*) 8 Statutes 1240.

(*a*) *Ibid.*, 1253.

(*b*) 11 Statutes 917.

(*c*) 8 Statutes 1223—1225.

Gas Meter Testing.—Under the Sale of Gas Acts, 1859 and 1860, the Metropolis Gas Act, 1861 (*d*), and the Gas Undertakings Acts, 1920 to 1934 (*e*), provision is made for regulating the measures used in the sale of gas and the appointment by the L.C.C. of inspectors to test meters in the County of London (excluding the City). The county council have three gas meter testing offices. [426]

Gas Supply.—The provisions of the Gas Undertakings Acts, 1920 to 1934, apply to London. The gas supplied is supervised, as regards the supply within the County of London by the L.C.C., and as regards the supply within the City of London by the City corporation (*f*). The council and the City corporation appoint and remunerate gas examiners for the several testing stations under their jurisdiction. The testing stations are under the control of the county council and the City corporation according to their situation; the companies provide and maintain the stations and the apparatus and materials required. [427]

Gas Testing.—Under the Gas Undertakings Acts, 1920 to 1934, the L.C.C. and the City corporation are in practice responsible for the calorific value, purity and pressure of gas supplied in the administrative county. Examination of the gas supplied is made daily at nineteen fixed testing stations situate within the county, including two within the City of London. [428]

Price.—The Board of Trade, under sect. 1 of the Gas Regulation Act, 1920 (*g*), have made orders varying the standard price of gas affecting all the companies except the South Metropolitan Gas Co., who obtained special Acts in 1920 and 1925. [429]

In London the L.C.C. and the City corporation are the local authorities for the purpose of the Gas Undertakings Acts, 1920 to 1934 (*f*). [430]

(*d*) 8 Statutes 1230, 1252, 1253.

(*e*) *Ibid.*, 1278 *et seq.*; 27 Statutes 302.

(*f*) See definition of "local authority" in s. 18 of the Act of 1920; 8 Statutes 1290.

(*g*) 8 Statutes 1279.

GASWORKS, RATING OF

See RATING OF SPECIAL PROPERTIES.

GATES

See ROAD PROTECTION.

GENERAL DEVELOPMENT ORDERS

See TOWN PLANNING SCHEMES.

GENERAL EXCHEQUER GRANTS

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See also titles : EDUCATION FINANCE ;
FINANCIAL ADJUSTMENTS ;
GOVERNMENT CONTROL ;
GRANTS.

Introduction.—The L.G.A., 1929, altered, among other things, the system of Government grants to local authorities. For many years before 1929 it had been realised that the relationship between the National Exchequer and local finances had been unsatisfactory, and open, in certain directions, to criticism. The Government in their proposals for the reform of local government (Cmd. 3134) took the view that any proper system should : (1) recognise that a fair contribution should be made from the Exchequer towards the cost of local services ; (2) ensure that local authorities have complete financial interest in their administration ; (3) be adapted in its working to the needs of the areas ; (4) permit the greatest freedom of local administration and initiative ; (5) provide for sufficient general control and advice from the central departments to ensure a reasonable standard of performance. [431]

The old relationship was considered to be particularly open to criticism on the following three main points :

(a) *Percentage Grants.*—The method of assessing grants-in-aid as a percentage of the approved net expenditure on a particular service had been criticised on the grounds that it tended to encourage local extravagance, expenditure being incurred above that necessary for

efficient administration in order to earn additional grant. It was also held that the method failed to take into account the needs of the different areas, in that less prosperous areas which needed a larger proportionate grant were unable to incur the expenditure to secure that grant. Thus a principle which has been held to be one of the most important in any system of Government grants, *i.e.* that it should be adaptable in its working to the needs of the areas, was vitiated. In addition, the detailed supervision which the percentage system entailed often proved irksome to the local authorities. [432]

(b) *Agricultural Rates Grants*.—When under the Agricultural Rates Act, 1896, agricultural land was derated to the extent of 50 per cent., the loss thus caused to local authorities was met by an annual grant of an amount equivalent to the loss of rates by spending authorities in the year preceding the passing of the Act. This grant was thus stabilised on the position as it existed when the rating relief was introduced, being neither related to the present expenditure nor the present needs of the authorities concerned. By the Agricultural Rates Act, 1923, the relief to agricultural land was extended to 75 per cent. and a yearly grant, equivalent to the additional loss of rates by spending authorities each half-year owing to the operation of the Act, was paid. Thus the grant under the 1896 Act was fixed and did not vary with the expenditure of the authorities, but that under the 1923 Act was a varying one related to the loss of rates in each half-year under the Act. [433]

(c) *The Assigned Revenues*.—These were introduced by the L.G.A., 1888, to provide local authorities with an annual revenue as a subsidy in aid of local expenditure. It was hoped that the yield from these revenues would increase annually in proportion to the increase in the expenditure of the authorities. But the enormous increase in that expenditure and the new grants created since 1888 greatly reduced the importance of the assigned revenues and rendered them inadequate to the expenditure and needs of the areas. [434]

These factors had a particularly important bearing in areas where industries were badly depressed. The local authorities concerned were faced with heavy rate burdens, caused partly by growing expenditure on the relief of distress, and partly by the loss of rate income owing to the closing of industrial hereditaments and the inability of unemployed ratepayers to meet their liabilities. Thus hampered from both angles, the position of the authorities was further aggravated by the existing system of Government grants which, as outlined above, did nothing to alleviate the financial position in those areas where Government aid was needed most. [435]

It had been apparent for some time that industry must be relieved from the heavy burden of rates, as compared with foreign competitors. By the L.G.A., 1929, and the Agricultural Rates Act, 1929, agricultural hereditaments were completely derated and industrial and freight transport hereditaments were relieved to the extent of 75 per cent. of the rates. The relationship between the national Exchequer and local finances had been far from satisfactory hitherto, but the loss of rate income would considerably aggravate both the position and the inequalities which already existed between different areas. Briefly, the Act provided for the discontinuance of many of the grants formerly paid, but the new block grant covered the amount lost by the local authorities in this way, and the rate income lost by reason of derating, with an additional grant of £5,000,000. The whole total

(which amounted to £43,571,909 in the first fixed grant period) is distributed among the local authorities on an entirely new basis, viz. "weighted population." This basis takes into account certain factors regarded as being important in order to make the assistance vary with the need of local government services in any area in relation to the ability of the area to meet the cost of those services. The basis is not to be applied in its entirety for a period of years as will be shown later. The formula for ascertaining weighted population is to be reviewed, together with other important factors in the new grant system, at the conclusion of the second fixed grant period, viz. April 1, 1937 (sect. 110). Any alteration found desirable on the practical experience gained during the first seven years will then be made. Some of the most important Government grants, *e.g.* those in aid of expenditure on housing, elementary education, higher education, police and main roads in counties, were continued on their old bases. Housing grants, other than those under the Fourth Schedule of the Housing Act, 1935, which are deficiency grants, are payable on a unit basis, elementary education on a special formula, and the remaining three on a percentage basis. [436]

Other important changes were effected by the Act of 1929. It had been considered for some years that the area for the administration of (and therefore the area of charge for expenditure on) the two important services of highways and public assistance had been too small. This position brought about great inequalities between different areas, especially between rural and urban areas. The Act placed the responsibility for the maintenance of classified roads in boroughs and urban districts, and all roads in rural districts on the county council, subject to the right of a borough council or U.D.C. to claim to maintain certain roads, and also the power of the county council to delegate to urban or rural authorities if such a step was considered desirable. In all cases the expenditure is defrayed by the county council as a general county charge. Public assistance was also transferred from the abolished boards of guardians and vested in the county and county borough councils. [437]

Discontinued Grants.—The following grants were discontinued as from April 1, 1930, by virtue of sect. 85 and Sched. II. of L.G.A., 1929 :

(1) The grants payable out of the Consolidated Fund into the Local Taxation Account. These were as follows :

(A) The estate duty grant (Finance Act, 1894, sect. 19 (*a*) and Finance Act, 1907, sect. 17 (1)) ;

(B) The variable equivalent of the proceeds of local taxation licences which were not by virtue of sect. 6 of the Finance Act, 1908 (*b*), levied by county and county borough councils (L.G.A., 1888, sect. 20 ; Finance Act, 1907, sect. 17 (2)) ;

(C) The fixed sum payable in respect of carriage licence duties (Finance (1909-10) Act, 1910, sect. 88 (2) (*c*) ; Revenue Act, 1911, sect. 18 (*d*) ; Roads Act, 1920, sect. 2 (2)) ;

(D) The fixed sum payable in respect of liquor licences (Finance (1909-10) Act, 1910, sect. 88 (1)) (*c*) ;

(E) The annual grant of £60,000 towards the costs of collection of licence duties (Finance Act, 1921, sect. 62) ;

(a) 8 Statutes 142.
(c) *Ibid.*, 759.

(b) 16 Statutes 739.
(d) *Ibid.*, 764.

(F) The fixed grant payable in respect of the proceeds of local taxation (customs and excise) duties (Revenue Act, 1911, sect. 17) ; and

(G) The grants under the Agricultural Rates Acts, 1896 and 1923.

Most of these enactments were repealed by L.G.A., 1929. [438]

- (2) The percentage grants hitherto payable in respect of certain health services as follows :

(i.) Maternity and Child Welfare.—On approved expenditure including grants to voluntary associations. (N.B.—The grants for the training of midwives and health visitors under the Maternity and Child Welfare Act, 1918, were continued (e)).

(ii.) Treatment of tuberculosis.—On approved expenditure on institutional and non-institutional treatment of patients. (N.B.—The grant towards the treatment of tuberculous ex-servicemen was continued.)

(iii.) Treatment of venereal diseases.—Towards approved expenditure on this service.

(iv.) Welfare of the blind.—Towards loan charges on approved schemes and to approved institutions under the Blind Persons Act, 1920.

(v.) Mental defectives.—Towards approved expenditure and grants to voluntary agencies under the Mental Deficiency Act, 1913 (e). [439]

- (3) The following grants hitherto made out of the Road Fund under the Roads Act, 1920 :

(A) Classification grants in respect of Class I. and Class II. roads and bridges in London and the county boroughs ;

(B) Grants for the maintenance of scheduled unclassified roads in administrative counties (e).

(N.B.—The percentage grants for Class I. and Class II. roads and bridges in administrative counties were continued.) [440]

The following additional matters with reference to grants should be observed. The assigned revenue grants formerly earmarked to police and higher education were discontinued but were merged into the ordinary percentage grants which were continued in respect of these services. The assigned revenue grants were :

- (i.) The grant of £300,000 in aid of police superannuation under sect. 7 of the Customs and Inland Revenue Act, 1890, and sect. 22 (3) of the Police Pensions Act, 1921 ;
- (ii.) The grant in respect of police pay and clothing formerly made out of the Exchequer contribution account under sect. 24 of L.G.A., 1888, and sect. 8 of the Police Act, 1919 ;
- (iii.) The grant for higher education purposes out of the local taxation (customs and excise) duties under sect. 70 of the Education Act, 1921 (f).

(e) See para. 2 of Second Schedule to Act ; 10 Statutes 979.

(f) All these enactments were repealed by L.G.A., 1929.

As from April 1, 1930, the local taxation licences levied by county and county borough councils continued to be levied and applied in aid of local rates generally. These licences are in respect of game dealers, dogs, guns, armorial bearings, male servants and killing game.

Payments corresponding to those which county and county borough councils had hitherto made out of their Exchequer contribution accounts under sect. 24 of L.G.A., 1888, are by virtue of sect. 85 and paras. 3, 4 of the Third Schedule to the Act of 1929 payable by those authorities out of their general funds. These grants are :

- (A) One-half of the salaries of medical officers of health and sanitary inspectors ;
- (B) Towards the fees of public vaccinators.

Any financial adjustment in force with regard to any of the grants discontinued by the Act ceased to have effect as from April 1, 1930. If, having regard to the Exchequer grants payable under the Act, a new adjustment was necessary, it could be made by agreement between the authorities concerned, or in default of agreement by a single arbitrator appointed by the Minister (sect. 85 (5)). [441]

Derating.—The Act of 1929 also brought about a large measure of derating. As from April 1, 1929, agricultural land and buildings (except dwelling-houses) were completely derated, and as from October 1, 1929, industrial and freight transport hereditaments were rateable at one-quarter only of their net annual value (Part V. of the Act and the Agricultural Rates Act, 1929). The rating authorities thus lost a considerable amount of rate income, and provisions are included in the Act to reimburse this loss, by reference to the standard year, as part of the general Exchequer grant. See also title DERATING. [442]

General Exchequer Contribution.—Sect. 86 of the Act provides for an annual contribution called the "general Exchequer contribution," to be paid out of monies provided by Parliament towards the expenses of local government in counties and county boroughs. The amount of this general Exchequer contribution is revised for each fixed grant period, and under sect. 86 (2) these are as follows :

- (A) First fixed grant period of three years from April 1, 1930 ;
- (B) Second fixed grant period of four years from April 1, 1933 ;
- (C) Thereafter each grant period consists of five years.

The general Exchequer contribution is the sum of the following amounts :

(1) The total losses on account of rates due to derating in all counties and county boroughs as calculated in accordance with the Act. This is dealt with later.

(2) The total losses on account of discontinued grants in all counties and county boroughs as calculated in accordance with the Act, also dealt with later.

(3) A sum of new money from National funds which consisted of £5,000,000 for each year of the first fixed grant period, and thereafter such amount as Parliament might determine for each grant period, so however that the proportion which the general Exchequer contribution for any fixed grant period bears to the total amount of rate and grant borne expenditure in the penultimate year of the preceding period, shall never be less than the proportion which the general Exchequer contribution for the first fixed grant period bore to the total amount

of rate and grant borne expenditure in the first year of that period (g). The term "rate and grant borne expenditure" means the local expenditure falling to be borne by rates and by general Exchequer grants made under Part VI. of the Act out of the general Exchequer contribution. If the expenditure of the penultimate year referred to above is abnormally increased by reason of an emergency proclamation under the Emergency Powers Act, 1920 (h), the first normal year prior thereto is to be taken (sect. 86). [443]

The following figures (i) show the composition of the annual general Exchequer contribution for the first fixed grant period and give an idea of the detailed amounts involved :

	£
Losses on account of rates - - - -	22,292,203
Losses on account of grants - - - -	16,279,706
Additional money - - - -	5,000,000
Total general Exchequer contribution -	<u>£43,571,909</u>

The total losses of rates and grants (£38,571,909) now remain fixed, but the general Exchequer contribution has been increased for the second fixed grant period by a revision of the additional money of £5,000,000. This revision was made by the L.G. (General Exchequer Contributions) Act, 1933 (k). The rate and grant borne expenditure for the first year of the first fixed grant period (*i.e.* 1930-31) was estimated in round figures to be £188 millions and for the penultimate year of that period (*i.e.* 1931-32) at £189½ millions. The minimum amount of the general Exchequer contribution for the second fixed grant period is found by applying the proportion 188 : 189½ to £43,571,909, making a necessary increase of £337,648 approximating to £350,000. The new money in the general Exchequer contribution for the second fixed grant period was increased by £350,000. The total general Exchequer contribution for the second fixed grant period is therefore £43,921,909 (l), made up as follows :

	£
Losses on account of rates - - - -	22,292,203
Losses on account of grants - - - -	16,279,706
Additional money - - - -	5,350,000
Total general Exchequer contribution -	<u>£43,921,909</u>

[444]

It should be noted that under sect. 87 (1) the M. of H. receive from the Road Fund towards the general Exchequer contribution (1) a sum equal to the certified amount of discontinued road grants for the standard year (*i.e.* 1928-29), adjusted to the amount which would have been paid for that year at the rates in force immediately before the appointed day (*i.e.* April 1, 1930), the latter rates being higher than those actually paid in the standard year; (2) in respect of each year of the first fixed grant period a sum equal to $\frac{80}{100}$ of £3,000,000, and for subsequent grant periods such sum as Parliament may

(g) For the second grant period, this sum has now been fixed at £5,350,000 annually, see below.

(h) 3 Statutes 501.

(i) See Annual Report of M. of H., 1933-34, pp. 218, 219, 320.

(k) 26 Statutes 289.

(l) Annual Report of M. of H., 1933-34, p. 219.

determine. By sect. 1 (b) of the L.G. (General Exchequer Contributions) Act, 1933 (*m*), the annual sum to be paid for the second fixed grant period is continued at the same amount. [445]

Additional and Supplementary Exchequer Grants.—There are also payable out of monies provided by Parliament sufficient amounts to provide the following grants payable to certain authorities in addition to the general Exchequer grants :

(1) Additional Exchequer grants to ensure a minimum gain by counties and county boroughs (sects. 90, 96, 99). These amounted in the first year of the first fixed grant period to £421,436, and in the first year of the second fixed grant period to £206,556 (*n*).

(2) Supplementary Exchequer grants to provide for losses arising through the operation of the Act in separately rated areas and payable to county borough, borough and district councils and the L.C.C. These amounted in the first year of the first fixed grant period to £1,036,567, and in the first year of the second fixed grant period to £1,030,739 (*n*).

(3) The amounts required under the proviso to sect. 89 where the county apportionment falls short of the amount which must be set aside therefrom in respect of capitation grants on the basis of a flat rate per unit of population for borough and district councils within the county. These amounted in the first year of the first fixed grant period to £98,652, and in the first year of the second fixed grant period to £228,443 (*n*).

Each of these matters is fully dealt with later under the appropriate heading. [446]

Losses on Account of Rates.—The losses on account of rates which as stated on p. 207, *ante*, amount to £22,292,203 of the general Exchequer contribution were arrived at in accordance with Part I. of the Fourth Schedule to the Act and numerous regulations made by the Minister.

It was necessary to calculate in the first place the loss of rates for each rating area and these comprised the county boroughs, boroughs, urban and rural districts outside London and the metropolitan boroughs in London. The rate borne expenditure of each of these authorities from which this loss was calculated comprised :

- (A) Their own net expenditure as adjusted for expenditure on transferred services ;
- (B) In the case of authorities other than county borough councils the precept proportion of the net general and net special expenditure of the county council (including that on transferred services) ;
- (C) An apportionment of the expenditure of joint authorities in the proportion in which each constituent council were liable to contribute to the joint expenditure.

The loss of rates for each county and county borough was determined by aggregating the losses of the rating areas therein.

The following is an outline of the method which was adopted as regards each rating area as prescribed by Part I. of the Fourth Schedule.

(*m*) 26 Statutes 290.

(*n*) Annual Report of M. of H., 1933-34, pp. 219, 321.

First was estimated the expenditure in respect of the year 1928-29, *i.e.* the standard year fixed by the Act, which would have fallen to be borne by rates levied therein on the assumptions (1) that elsewhere than in London the county council precepts had been based on the poundage basis under sect. 9 of the R. & V.A., 1925 (o), instead of the county rate basis which actually applied to that year; (2) that the expenditure on the transferred services (*i.e.* highways and public assistance) had been incurred by county and county borough councils, and in the case of the former authorities was expenditure for general county purposes; and (3) that as regards London, the London (Equalisation of Rates) Act, 1894, had not been in operation during that year. [447]

Secondly, the unreduced rateable value (*p*), and the reduced rateable value (*q*), were calculated, and the difference, increased by a percentage for losses in collection ascertained by calculating the proportion which the loss on collection bore to the gross rate income of the area for the standard year, was known as the loss of rateable value. [448]

Thirdly, to the net expenditure of a county or county borough was added that on the transferred services as already indicated and where the area of a former highway or poor law authority was not wholly comprised within one county or county borough the expenditure of those authorities was apportioned under sect. 109 (1) and para. 2 of Part I. of the Fourth Schedule, as follows :

- (1) Expenditure on highways (except loan charges) in proportion to the certified mileage of roads transferred in the respective areas.
- (2) Expenditure of boards of guardians (except loan charges) in proportion to the certified number of persons in receipt of relief resident in the respective areas.
- (3) Expenditure on loan charges in proportion to the reduced rateable values of the respective areas.

Under para. 3 of Part I. of the Fourth Schedule, the loss on account of rates of a rating area was a sum bearing the same proportion to the expenditure which would have fallen to be borne by rates (as calculated above) as the loss of rateable value (appropriately adjusted for percentage of losses in collection) bore to the unreduced rateable value of the area. Where a rating area included any separately rated area, the losses on account of rates based on the expenditure for which such areas were separately rated were similarly determined. [449]

The loss on account of rates of a county was the aggregate of the losses of the several rating areas therein. If a rating area was partly in one and partly in another county, each part was treated as a separate area (para. 4).

In a similar manner the losses on account of special and parish rates were calculated and the aggregate obtained for each district in which such rates were levied (paras. 5 and 6).

In its application to London the above method applied to the calculation of the loss on account of rates of the City of London and the

(o) 14 Statutes 627.

(p) That is what would have been the rateable values of all hereditaments on October, 1, 1929, if derating had not then taken place, but on the assumption that the net annual values thereof were the net annual values as they actually were on that date.

(q) That is the rateable value according to the valuation list in force on October 1, 1929.

metropolitan boroughs subject to the modifications that (i.) the estimated and certified expenditure used for the calculations was that of the council in respect of the standard year which fell to be borne by rates; and (ii.) the loss of each council on account of rates was the aggregate of the losses in respect of rates levied for the expenditure of the council in the several separately rated areas (para. 7).

Under sect. 107 any contribution made by the Crown in aid of rates on property occupied for public purposes was to be treated as money paid as rates, the appropriate rateable value being that on which the contribution was based. In the case of premises which if in rateable occupation would have been agricultural, industrial or freight transport hereditaments, the "unreduced rateable value" was that on which the contribution would have been based for the half-year commencing October 1, 1929, had the Act not been passed, and the "reduced rateable value" was that on which the contribution was actually computed for that half-year. [450]

Under the powers contained in sect. 108, the M. of H. made numerous regulations to facilitate the calculation of losses of rates, of which the principal are:

- (1) The Local Government (Final Statement of Unreduced and Reduced Rateable Value, etc.) Regulations, 1930, and similar previous regulations. These required statements to ascertain the loss of rateable value and also the percentage of losses in collection of rates;
- (2) The Local Government (Statement of Rate Borne Expenditure) Regulations, 1929 (*r*), and separate regulations issued for each class of authority. These required returns of rate-borne expenditure in the standard year;
- (3) The Local Government (Calculation of Rate Borne Expenditure, etc.) Regulations, 1932 (*s*), which superseded various provisional regulations made in 1929 and 1930. These gave detailed instructions for *inter alia* estimating rate borne expenditure in order to calculate losses on account of rates and for dealing with the various difficulties. [451]

Losses on Account of Grants.—The losses of authorities on account of grants were determined in accordance with the rules in Part II. of the Fourth Schedule and also the Regulations of 1932 just mentioned. In the first place the loss of grants was calculated for each spending authority and the loss for each county and county borough was found by aggregating those of the spending authorities therein.

First was estimated the amounts payable in respect of the standard year (*i.e.* 1928–29) to spending authorities within each county and county borough out of the discontinued grants after deducting a sum equal to the amount payable out of the local taxation account or out of the proceeds of local taxation licences for higher education and police services. But no part of the annual or additional annual grant made under the Agricultural Rates Acts, 1896 and 1923, was deemed to be applicable to education and police purposes; and any financial adjustment between spending authorities in force for the standard year which affected the allocation of the amounts paid for discontinued grants was taken into account (para. 1). The above amounts were estimated on the assumption that road grants had been payable in the

standard year at the increased rates applicable for the year 1929-30 (para. 2). [452]

In estimating the loss of grants where the area of a spending authority was not wholly within one county or county borough, the amount payable to the authority out of the discontinued grants was apportioned under sect. 109 (2) and para. 3 of Part II. of the Fourth Schedule as follows :

- (1) Road grants in proportion to the certified mileage of roads for which the grants were made in the respective areas ;
- (2) Grants to voluntary associations for the welfare of the blind in proportion to the number of blind persons under the care of the association ordinarily resident in the respective areas ;
- (3) Other grants on such basis as the Minister directed. [453]

The loss on account of grants of a county or county borough was the aggregate of the losses of all the spending authorities therein (para. 4), and a " spending authority " meant county, county borough, borough and district councils, the Common Council of the City of London, metropolitan borough councils, boards of guardians and also voluntary associations and joint authorities (see para. 5 and sect. 134).

Any grants paid or payable to the King Edward VII. Welsh National Memorial Association for institutions for the treatment of tuberculosis were to be treated as being met out of the discontinued grants (para. 5).

In London the Minister was allowed by order to determine the extent to which grants to voluntary associations for maternity and child welfare were apportionable as if they had been grants to the L.C.C. on the one hand and grants to the Common Council and the metropolitan borough councils on the other hand, and the loss on account of grants of the Common Council and each metropolitan borough council was their own loss as a spending authority, together with such part (if any) of the grants to voluntary associations as were apportioned to them, and the appropriate proportion of the loss on account of grants of the receiver of the metropolitan police district (para. 6). [454]

Apportionment of General Exchequer Contribution.—The general Exchequer contribution is first apportioned among the counties and county boroughs under sect. 88 of the Act, so as to cover during the first and second grant periods 75 per cent. of the losses on account of rates and grants ; during the third grant period, 50 per cent. of those losses ; and during the fourth grant period, 25 per cent. of those losses (*t*). The residue (and after the expiration of the first four periods the whole amount) is apportioned in proportion to the weighted populations, the calculation of which is dealt with in the following paragraph.

The amounts so apportioned are known as the county and county borough apportionments. [455]

Weighted Population.—Eventually, the general Exchequer contribution will be distributed to counties and county boroughs in accordance with their " weighted populations," although this basis will not be applied in its entirety for some years to come, as is shown in the preceding paragraph. The actual population of these areas is to be weighted by factors which are considered to have some bearing on the needs of the area and the ability of it to bear the cost of local government services. They are briefly as follows :

- (1) The proportion of children under five years of age to the population.

(*t*) S. 88 and definition of " appropriate percentage " in s. 134.

- (2) The rateable value per head of population.

These two are adopted to provide an index of the general needs and relative wealth and poverty of an area.

- (3) The proportion of unemployed persons to the population.

This is only used when unemployment is abnormal, as a further index of the needs of an area.

- (4) The population per mile of public roads.

This is only applicable to counties outside London and is used as a measure of the distribution of the population over large areas. [456]

The actual rules for calculating weighted population are contained in Part III. of the Fourth Schedule. The population as estimated by the Registrar General for the standard year (*i.e.* 1928–29) for the first grant period, and the last year of the preceding period for subsequent grant periods, is increased where the proportion of children under five years of age per 1,000 of the population is more than 50 by the percentage which the excess over 50 bears to 50. This number was adopted as a basis as representing, with a few exceptions, the minimum proportion of children found in any area. Where the rateable value per head of population on October 1, 1929, for the first grant period, and as regards other grant periods, April 1 in the last year of the preceding period, is less than £10, the population is also increased by the percentage by which the amount of the difference between £10 and the rateable value per head bears to £10 (paras. 1 and 5).

The above two factors operate independently on the original estimated population. [457]

The population as increased above is further increased, where the average number of unemployed insured men, plus 10 per cent. of the unemployed insured women, over the three years immediately preceding each grant period, as certified by the Minister of Labour, expressed as a percentage of the population exceeds $1\frac{1}{2}$ per cent., by a percentage equal to that excess multiplied by the appropriate multiple (para. 2). This multiple for the first and second grant periods is 10, and for subsequent periods is ascertained somewhat differently, the ratio which the general Exchequer contribution in the grant period in question bears to that part distributed on the weighted population basis coming into play (para. 5).

In the case of counties (other than London) where the inhabitants are scattered, the population is also increased where the population per mile of public road is less than 100, by the percentage which the difference between 200 and the population per mile of road bears to 200, or where the population per mile of public road is greater than 100 by the percentage which 50 bears to such population per mile of road (para. 3). [458]

The appropriate formula for weighted population in the first two fixed grant periods is as follows :

Let p =population in the appropriate year; c =50 or number of children under five years of age per 1,000 of population whichever is greater; a =10 or rateable value per head of population whichever is less; u =1.5 or the percentage which the number of unemployed insured men plus 10 per cent. of number of unemployed insured women bears to the population whichever is the greater; and m =number of persons per mile of public road.

Then if m is greater than or equal to 100 the weighted population is :

$$p \left(1 + \frac{c-50}{50} + \frac{10-a}{10} \right) \left(1 + \frac{u-1.5}{10} + \frac{50}{m} \right)$$

If m is less than 100 then the weighted population is :

$$p \left(1 + \frac{c-50}{50} + \frac{10-a}{10} \right) \left(1 + \frac{u-1.5}{10} + \frac{200-m}{200} \right)$$

In the case of London and the county boroughs the last term in the second bracket is always taken as nil as there is no weighting for density of population in these cases. [459]

The following is an example of the method of determining weighted population for a hypothetical county council for the first two grant periods. Presume that the population is 500,000, the number of children under five years of age per 1000 of the population is 70; the rateable value per head of population is £5; the percentage of unemployment to population is 3 per cent.; and the population per mile of road is 300.

Then the weighted population is :

Population	-	-	-	-	-	500,000
(i.) Weighting for children under five years.						
Number per 1,000 population is 70.						
Excess of 70 over 50 is 20 which is 40 per cent of 50.						
∴ add 40 per cent. of 500,000	-					200,000
(ii.) Weighting for low rateable value.						
Amount per head of population is £5.						
£5 is less than £10 by £5 which is 50 per cent. of £10.						
∴ add 50 per cent. of 500,000	-					250,000
						<hr/> 950,000
(iii.) Weighting for unemployment.						
Percentage of unemployment is 3 per cent.						
Excess of 3 per cent. over 1½ per cent. is 1½ per cent.						
Ten times this is 15 per cent.						
∴ add 15 per cent. of 950,000	-					142,500
(iv.) Weighting for density of population.						
Population per mile of road is 300.						
This being greater than 100 there must be added the percentage which 50 bears to 300 (i.e. 16⅔ per cent.).						
∴ add 16⅔ per cent. of 950,000	-					158,333
Total weighted population of county						<hr/> 1,250,833

[460]

The table on p. 224, *post*, shows the total weighted population of England and Wales in the first and second grant periods as given on p. 324 of the Annual Report of the M. of H. for 1933-34. The figures for the second period were not then definitely settled. An analysis of this table shows that comparing the second period with the first period, while the weighting for children, rateable value and sparsity of population is lower, that for unemployment is much higher. This reflects the state of the country in the years 1931 to 1933, and should benefit those areas suffering from heavy unemployment. [461]

Grants to County Councils (outside London).—The application of the grants to county councils is governed by sect. 89 of the Act.

As respects the *general Exchequer grant*, out of the county apportionment arrived at as shown *ante*, p. 211, there is set aside the amount required to pay the grants (other than supplementary Exchequer grants) due to borough and district councils within the county which are dealt with later. The balance is the general Exchequer grant of the county council and is paid direct to them. Should the amounts to be set aside for borough and district councils exceed the original county apportionment, the balance is payable out of monies provided by Parliament (proviso to sect. 89).

The *additional Exchequer grant* is payable to a county council out of monies provided by Parliament where the county apportionment as calculated under sect. 88, falls short of a certain amount for each grant period (sect. 90). If the county apportionment for the first fixed grant fell short of the standard sum (see below) increased by an amount equivalent to 1s. per head of the estimated population of the county for the standard year (1928–29) then the additional Exchequer grant was an amount equivalent to that deficiency (sect. 90 (1)). As regards each subsequent fixed grant period, if the county apportionment falls short of the standard sum (see below) increased by the greater of the two following amounts, then the additional Exchequer grant is to be an amount equal to that deficiency :

- (1) A sum equivalent to 1s. per head of the estimated population of the county for the last year of the preceding grant period ;
or
- (2) A sum equivalent to one-third of the excess of the county apportionment for the grant period in question over what it would have been had the general Exchequer contribution for that period been the same as that for the first grant period (sect. 90 (2)). [462]

The “ standard sum ” referred to above is the losses on account of rates and grants of the county so however that (i.) if for the grant period in question, the general Exchequer contribution is less than that for the first grant period, the standard sum is the amount of such losses reduced proportionately to such diminution ; and (ii.) if for the grant period in question the weighted population of the county is less than that for the first grant period adjusted as regards unemployment as explained later, the standard sum is the amount of such losses reduced (or if an adjustment is also made under (a), further reduced) proportionately to such diminution. For this purpose the appropriate weighting multiple for unemployment for the grant period in question is also applied to the first grant period (sect. 90 (3), 90 (4)).

It is provided in sect. 105 that, except where otherwise specified, general and additional Exchequer grants shall be applicable to general county purposes.

On pp. 225, 226, *post*, will be found an exemplification of the method of calculating the general and additional Exchequer grants of a provincial county council for the first grant period. [463]

Grants to Borough and Urban District Councils.—The general Exchequer grants comprise every grant made under the Act to these councils and are covered by sects. 91 to 94 of the Act. First, out of the county apportionment is set aside the Capitation grant. For this

purpose there is calculated the number of pence produced by dividing one-half of the county apportionments (exclusive of Parliamentary grants to make up any deficiencies therein) to counties other than London by the aggregate of the estimated populations of those counties in the appropriate year (*i.e.* 1928-29 for the first period and the last year of the preceding period in any other case). The grant to a borough or urban district is its estimated population in the appropriate year multiplied by the amount as so calculated (Part IV. of the Fourth Schedule).

To this is added, where the borough or district council administers the maternity and child welfare service, such an amount as, having regard to the expenditure on the service, is agreed between the M. of H., county council and borough or district council as being equitable (sect. 93). Such an agreement must be embodied in a scheme made before the commencement of each grant period.

Supplementary Exchequer grants are provided for by sect. 94 for the purpose of adjusting as between separately rated areas in any county any decreases or increases in rate poundages (other than of special and parish rates) due to the operation of Parts I., III., V. and VI. of the Act (which deal respectively with transferred poor law and highway functions, derating and the new system of grants) during the period of nineteen years from April 1, 1930. The term "separately rated area" means any parish, part of a parish or place which is either a contributory place or an area otherwise subject to separate or differential rating (other than differential rating of a temporary character) or as respects any county borough or any district in which there is no such parish or part of a parish or place, then the county borough or the district as the case may be (sect. 134).

The supplementary grants are arrived at by ascertaining under the rules in the Fifth Schedule as respects every separately rated area whether (apart from the payment of a supplementary Exchequer grant) the operation of the above-mentioned parts of the Act result in a gain or a loss (sect. 94 (1) (a)). Under these rules is estimated as regards each area the rate in the £ required to raise the amount of the expenditure in the standard year (1928-29) falling to be borne by rates (other than special or parish rates) on the assumptions that the rateable values of the hereditaments were unreduced, and that the expenditure on transferred services was incurred by the authorities formerly carrying out those services (Sched. V., para. 1). [464]

There is then estimated the rate in the £ required to raise such part of the expenditure for the standard year as would have fallen to be borne by rates (other than special or parish rates) on the assumptions that (i.) the rateable values of all hereditaments were the reduced values; (ii.) the expenditure on transferred services was that of county and county borough councils and as regards the former authorities was for general county purposes; and (iii.) that the standard year was a year falling within the first fixed grant period and the provisions of Part VI. of the Act relating to grants (other than additional and supplementary grants to county boroughs and supplementary grants to boroughs and districts) had then been operative (Sched. V., para. 2).

The rate in the £ ascertained by the second calculation is subtracted from that ascertained by the first calculation. If the result is a plus quantity, then the amount represented by that rate in the £ on the reduced rateable value is the gain of the area. If the result is a minus

quantity the amount represented by that rate in the £ on the reduced rateable value is the loss of the area (paras. 4, 5 and 6). [465]

For each separately rated area where a loss is disclosed there is added to the general Exchequer grant for the first five years from April 1, 1930, the full amount of the loss; for each of the next fourteen years, the amount of the loss diminished by one-fifteenth of it each year (sect. 94 (1) (b)).

These additions are provided as to one-half from monies voted by Parliament, and as to the remaining one-half by deductions from the capitation grants in those areas of the county in which a gain is disclosed, the deductions being proportionate to the gain in each area (sect. 94 (1) (c)), provided that any sum by which any such contribution would in the case of any district exceed the amount allocated by way of capitation grant to that district shall be paid out of moneys provided by Parliament. [466]

The Minister made the Local Government (Adjustment of Gains and Losses in County Districts) (First Fixed Grant Period) Regulations, 1932 (*u*), to ensure that the grants paid under this heading in the first grant period were distributed to the separately rated areas so as to effect the objects of sect. 94. These have been applied to the first two years of the second fixed grant period by the Local Government (Adjustment of Gains and Losses in County Districts) (Second Fixed Grant Period) Regulations, 1933 (*a*). The effect of these regulations is as follows:

(1) The total capitation grant is first apportioned to the separately rated areas within the district in proportion to the product of a penny rate in such areas calculated in accordance with the Rating and Valuation (Products of Rates and Precepts) Rules, 1929 (*b*).

(2) Any sums certified by the Minister as being deducted under sect. 94 (1) (c) (ii.) in respect of contributions from any separately rated areas towards making good losses in the losing areas of the county must be deducted from the apportioned share of the capitation sum of such areas and the general rate levied therein adjusted accordingly.

(3) Any sums certified by the Minister as being added in respect of the contribution (which is made partly as a supplementary grant and partly out of the gains of the gaining areas of the county) towards losses of separately rated areas in the borough or district must be added to the apportioned share of the capitation sum of such areas and the general rate levied therein adjusted accordingly.

(4) The balance (if any) of the general Exchequer grant other than that applicable to losses on account of special and parish rates, is to be applied in aid of the general rate over the whole borough or district, and where there are no separately rated areas therein, the general Exchequer grant is to be applied in aid of that general rate.

(5) If the council of a borough or district are satisfied that, if full effect were given to the regulations, the rate poundage of each separately rated area within the borough or district would not be varied by more than 1*d.* in the £ from that which would be required if the grant was applied in aid of the general rate uniformly over the whole of the borough or district, then they may resolve so to apply it. [467]

Grants to Rural District Councils.—The general Exchequer grants of rural district councils comprise every grant made to them under the

(*u*) S.R. & O., 1932, No. 281. See also amending regulations; S.R. & O., 1934, No. 682; 1935, No. 170.

(*a*) S.R. & O., 1933, No. 212.

(*b*) S.R. & O., 1929, No. 12; 14 Statutes 821; as amended by S.R. & O., 1933, No. 786.

Act. They are calculated in a similar manner to those of boroughs and urban districts, as indicated in the preceding pages, but the flat rate on which the capitation grant based on population is payable is one-fifth of the rate used for boroughs and urban districts (Sched. IV., Part IV., para. 3). Provision is also made in sect. 92 for compensation on account of special and parish rates levied within a rural district in the standard year. The losses on account of those rates will have been determined similarly to the calculation of losses on account of rates generally. The compensation provided is that during the first and second grant periods 75 per cent. of the loss is set aside out of the county apportionment and the remaining 25 per cent. is payable by the county council out of the county fund to the district council; and during the third and fourth grant periods 50 per cent. and 25 per cent. respectively of the loss is to be set aside out of the county apportionment. After the second period, the amount to be paid by the county council out of the county fund is to be fixed by them.

The Minister has made the Local Government (Special and Parish Rates) (First Fixed Grant Period) Regulations, 1932 (c), providing for the proper application of these grants on account of the losses of special and parish rates. These have been extended to the second grant period by the Local Government (Special and Parish Rates) (Second Fixed Grant Period) Regulations, 1933 (d). The Minister must certify to each R.D.C. containing minor separately rated areas in which a special or parish rate was levied in the standard year, the loss on account thereof; and the total amount received by way of compensation grants under sect. 92 of the Act is divisible into two sums which are allocated as follows:

(1) To each minor separately rated area, in which a special rate was levied in the standard year, the amount of the loss thereon in aid of any special rate levied therein in the year in question.

(2) To each minor separately rated area in which a parish rate was levied in the standard year, the amount of the loss thereon in aid of the general rate (including additional items) levied therein in the year in question. [468]

The following table taken from p. 321 of the Annual Report of the M. of H. for 1933-34, shows the method of calculating the rates of capitation grants payable to boroughs and district councils as explained above. The figures for the second fixed grant period are to some extent provisional, but are the latest available.

Heading.	First Fixed Grant Period.	Second Fixed Grant Period.
1. Total county apportionments of administrative counties outside London - - -	£27,057,387	£27,064,290
2. One-half of the above amounts - - -	£13,528,693	£13,532,145
3. Estimated population of administrative counties outside London - - -	21,711,171	22,444,299
4. Flat rate per head appropriate to:		
(a) Boroughs and urban districts.		
(Item 2 multiplied by 240 and divided by item 3) - - - - -	150d.	145d.
(b) Rural districts.		
(Item 4 (a) divided by the figure 5) -	30d.	29d.

[468A]

Grants to County Borough Councils.—These are covered by sects. 95 to 97 of the Act.

The county borough apportionment is paid direct to the council and is known as the *general Exchequer grant* (sect. 95).

An *additional Exchequer grant* is payable under sect. 96 to a county borough council where the county borough apportionment falls short of a certain amount for each grant period. First it is ascertained under the Fifth Schedule whether the operation of those parts of the Act dealing with the transfer of poor law functions, derating, and the new grants, result, apart from the payment of an additional or supplementary Exchequer grant (dealt with, *post*), in a gain or a loss to the council (*e*). If the county borough contains more than one separately rated area, the gain or loss is ascertained for each and aggregated for the authority as a whole (proviso to sect. 96 (1)).

If the county borough apportionment for the first grant period fell short of the standard sum (see later) by an amount equivalent to 1s. per head of the estimated population for the standard year (1928–29), there was paid out of moneys provided by Parliament during each year of that period a sum equivalent to the deficiency (sect. 96 (2)). As regards each subsequent grant period, if the county borough apportionment falls short of the standard sum increased by the greater of the two following amounts there must be paid out of moneys provided by Parliament in each year of the grant period a sum equivalent to the deficiency (sect. 96 (2)). The amounts referred to are :

(1) A sum equivalent to 1s. per head of the estimated population for the last year of the preceding grant period ;

(2) A sum equivalent to one-third of the excess of the county borough apportionment for the period in question over what it would have been had the general Exchequer contribution for that period been the same as for the first grant period.

The standard sum is an amount equal to the county borough apportionment for the first fixed grant period increased by the loss or decreased by the gain of the area as a whole as calculated above, so however that (1) if for the fixed grant period in question the general Exchequer contribution is less than that for the first grant period the standard sum is this amount reduced proportionately to such diminution ; and (2) if for the fixed grant period in question the weighted population of the county borough is less than that for the first grant period adjusted as regards unemployment, the standard sum is this amount reduced (or if an adjustment is also made under (1) above, further reduced) proportionately to such diminution (sect. 90 (3) as modified by sect. 96 (2)).

The expression “adjusted as regards unemployment” means calculated as if the appropriate weighting multiple for the grant period in question applied to the first grant period and not that which actually did apply (sect. 90 (4)). [469]

The *supplementary Exchequer grant* to county boroughs is covered by sect. 97 of the Act and provides for the adjustment of gains and losses in separately rated areas of a county borough.

Where a county borough comprises two or more separately rated areas, then for the purpose of adjusting as between these areas any decreases or increases in the poundage of rates due to the operation of

(e) This operation is described *ante*, p. 215.

those parts of the Act dealing with the transfer of poor law functions, derating and the new grants during the nineteen years from April 1, 1930, there is ascertained under sect. 97 (1) and the Fifth Schedule (f), as regards every separately rated area, whether the operation of the above parts of the Act would, apart from the payment of any additional or supplementary Exchequer grant result in a gain or a loss and the amount thereof. If a loss is disclosed as regards any area and the additional Exchequer grant of the county borough is less than one-half of the aggregate amount of the losses of all the areas, there is paid out of monies provided by Parliament the following amounts by way of supplementary Exchequer grant :

- (1) For the first five years beginning on April 1, 1930, such sum as with the additional Exchequer grant (if any) is equal to one-half of the aggregate of such losses ; and
- (2) For each of the next fourteen years, the amount to be paid is that paid in the preceding year reduced by one fifteenth of the original amount. This grant thus terminates at the end of nineteen years (sect. 97 (1) (bb)). [470]

The Minister under the powers of sect. 97 (1) (c) of the Act has made the Local Government (Adjustments of Losses in County Boroughs) Regulations, 1933 (g), to ensure that these grants are applied in making good losses in areas in which a loss is disclosed in accordance with the objects of the section. Where in a county borough containing one or more minor separately rated areas, one or more of them is a losing area, they require the Minister to certify the amount of the loss in each such area. Where an additional Exchequer grant exceeding in amount the aggregate of the losses of the losing areas is received, the council must out of the total general and additional Exchequer grants apply each year in aid of so much of the general rate as is leviable in any losing area a sum equivalent to the certified amount of the loss thereof. The balance of the above grants must be applied in aid of the general rate over the whole of the borough. [471]

Where no additional Exchequer grant is received, regulation 3 (3) requires the council in each year to :

- (A) Ascertain the area proportion of the general Exchequer grant in respect of each minor separately rated area ;
- (B) Apply in aid of so much of the general rate as is leviable in a losing area, such proportion of the supplementary Exchequer grant payable to the council as is in respect of the loss of that area, together with a sum equivalent to the area proportion of the general Exchequer grant increased by an amount not less than one-half of the amount of the loss as certified by the Minister ;
- (C) Apply in aid of so much of the general rate as is leviable in each of the other minor rated areas, a sum equivalent to that area's proportion of the general Exchequer grant, reduced by the amount (if any) contributed by that area towards the aggregate of the sums by which the losing areas' proportions of the grant, in accordance with (B) above, are increased.

(f) See *ante*, p. 215.

(g) S.R. & O., 1933, No. 292.

If the council are satisfied that, if adjustments were made in accordance with the above requirements, the rate in the £ in each minor separately rated area would not vary by more than one penny from that which would be leviable if all the grants were applied in aid of the general rate over the whole borough, then the council may resolve that they be so applied. [472]

Payment of Grants.—The grants under the Act are, in accordance with sect. 103, payable at such times and in such manner as the Treasury may direct. In practice, they are paid by eight instalments annually through the head office of the bankers of each council. [473]

Treatment of Grants in Accounts.—The new grants are not in any way a modified or altered form of the discontinued grants, and they cannot be earmarked to any particular services like the former grants. They are made in aid of local rates generally and, as such, should be credited to the county fund or the general rate fund as the case may be. This treatment is obviously anticipated by the M. of H., for, in the regulations prescribing the form of rate demand note (*h*), the equivalent rate poundages of the Exchequer grants are shown as a deduction from the total rate levied for the cost of services and described as being in aid of local expenditure generally. [474]

Power of Minister of Health to Reduce Grants.—Sect. 104 of the Act allows the Minister to reduce the grants payable under the Act for any year to any authority, if he is satisfied, either on representations made to him by any association or other body experienced or interested in public health matters, or even without such representations, that the council have failed to achieve or maintain a reasonable standard of efficiency and progress in the discharge of their public health functions, and that the health or welfare of the inhabitants has been or is likely to be thereby endangered. In this respect regard is to be had to the standards maintained in other areas where the financial resources and other relevant circumstances are substantially similar (sect. 104 (a)).

Again, if the Minister is satisfied that the council's expenditure has been excessive and unreasonable, regard being had to the financial resources and other relevant circumstances of the area, or if the Minister of Transport certifies that the council have not maintained their roads, or any part thereof, in a satisfactory condition, the M. of H. may reduce the grants for the year (sect. 104 (b) (c)). A report, stating the reasons for the reduction and its amount, must be laid before Parliament in each case. [475]

Investigation of New System of Grants.—Before the expiration of the second fixed grant period, the Minister must, under sect. 110, in consultation with associations of local authorities, cause an investigation into the working of (1) the method of calculating weighted populations under Part III. of the Fourth Schedule; (2) the method of calculating the amounts to be allocated to non-county boroughs and districts on the basis of population under Part IV. of the same Schedule; and (3) the weighted population grant to the City of London and metropolitan boroughs under sect. 98. [476]

Contributions by Authorities to Public Health Services.—Owing to the operation of the new system of grants, no direct grants are now paid by the M. of H. to voluntary associations for health services, but instead contributions are payable by local authorities to such associations under sects. 101 and 102 of the Act, which deal respectively with the maternity and child welfare service and other public health services.

It is the duty of every county and county borough council (other than the L.C.C.), six months before the commencement of each new grant period, to prepare and submit to the Minister a scheme for securing the payment by the council of annual contributions towards the expenses of voluntary associations providing maternity and child welfare services in the council's area (sect. 101 (1)). Such a scheme is subject to the approval of the Minister, and a county council must determine whether and to what extent the services provided by any association are such that contributions should be paid by a non-county borough or district council, who are responsible under the Maternity and Child Welfare Act, 1918, for the administration of that service in their own area (sect. 101 (4)). The scheme must provide for the payment to any such association whose services were immediately before April 1, 1930, approved by the Minister of such annual contribution, not being less than that determined by the Minister, as may be specified in the scheme; and for the payment to any such association in respect of any services not so approved of such annual contribution as may be specified in the scheme (sect. 101 (2)).

Schemes of this nature may be amended during any fixed grant period if any new association provides, or any existing association extends its maternity and child welfare services for the benefit of the council concerned (sect. 101 (5)).

As respects other public health services, the Minister must under sect. 102, before each grant period, after consultation with the councils of the counties and county boroughs concerned or associations representing them, make schemes providing for contributions to voluntary associations providing services for (1) the welfare of the blind (sect. 102 (1)); (2) the assistance or supervision of mental defectives while not in institutions (sect. 102 (2)); and (3) the treatment of persons suffering from tuberculosis by the King Edward the Seventh National Memorial Association in Wales and Monmouth (sect. 102 (3)).

At the request of the local authority concerned, the Minister may pay the contribution of the council to a voluntary association direct to that association and deduct the amount from the council's general Exchequer grant (sect. 106). [477]

Alterations of Exchequer Grants on Alterations of Boundaries.—Sect. 108 (2) of the Act (i) provided that the L.G. (Adjustments) Act, 1913 (j), should have effect as from April 1, 1930, as if for the reference in sect. 1 (1) (a) to the Estate Duty Grant and the residue under the Local Taxation (Customs and Excise) Act, 1890, there were substituted a reference to the Exchequer grants payable under Part VI. of the Act of 1929; and as if for the rules in Part I. of the First Schedule to the Act of 1913, there were substituted a reference to the regulations made by the M. of H. under sect. 108 (1) (b) of the Act of 1929. This latter

(i) Repealed by L.G.A., 1933.

(j) 10 Statutes 849.

section authorised the Minister to make regulations providing for the manner in which the Exchequer grants payable under the Act are to be adjusted if and so far as any adjustment is required in consequence of any alterations or combinations of authorities, or alterations of boundaries, taking effect on or after April 1, 1930. [478]

The L.G. (Adjustments) Act, 1913, was repealed as from June 1, 1934, by the L.G.A., 1933 (*k*), and sect. 152 and the Fifth Schedule to the latter Act (*l*) provide that any adjustments of the grants payable under the L.G.A., 1929, must be made in accordance with the regulations issued under sect. 108 (1) (*b*) of that Act, as indicated above, but that no alteration of income in consequence of such an adjustment of the grants shall be taken into account in estimating the difference in the burden falling on the remaining ratepayers of an area on an alteration of boundaries. This appears to exclude the possibility of the diminution of the Exchequer grants being cited as a factor of increased burden when the area of an authority is decreased. [479]

The rules made under sect. 108 (1) (*b*) of the Act of 1929 are the Local Government (Adjustment of Grants) Regulations, 1932 (*m*), which consolidated and superseded various provisional regulations made in 1930 and 1931. They do not extend to London, and the definition of "adjusting amount" was altered by amending regulations in 1934 (*n*).

The regulations are summarised in the title FINANCIAL ADJUSTMENTS on pp. 46—48, 53—55 of the present volume, and reference should also be made to the general description of Exchequer grants on pp. 44—46. [480]

Additional Statistics.—In addition to the figures given on p. 224, *post*, further statistics of the grants will be found in the Annual Report of the M. of H. for 1933—34. The summary on p. 334 may in particular be usefully referred to. This shows the total Exchequer grants payable for the first year of the first fixed grant period (*i.e.* 1930—31) and the first year of the second fixed grant period (*i.e.* 1933—34) respectively, in London, counties outside London, county boroughs, the Isles of Scilly, and Wales, and how these were calculated, being a summary of the detailed figures given as respects counties on pp. 330—333 of the Report, as respects county boroughs on pp. 336—342, and as to London on pp. 343—346. [481]

London.—The provisions governing the general Exchequer grants to London authorities are contained in sects. 98 to 100 of the L.G.A., 1929 (*o*).

Grants to L.C.C. GENERAL EXCHEQUER GRANT.—The county apportionment is ascertained in the same manner as for provincial county councils (*p*), except that there is no weighting for density of population (sects. 88, 98 (2)); and the following deductions are made from the county apportionment under sect. 98 :

(1) A sum equivalent to the appropriate percentage (*q*) (*i.e.* 75 per

(*k*) Except as to alterations which took effect before April 1, 1930.

(*l*) 26 Statutes 390, 507.

(*n*) S.R. & O., 1934, No. 681.

(*p*) See *ante*, p. 211.

(*m*) S.R. & O., 1932, No. 161.

(*o*) 10 Statutes 945.

(*q*) See definition in sect. 134.

cent. for the first and second, 50 per cent. for the third and 25 per cent. for the fourth fixed grant period) of the losses on account of rates and grants of the City of London and each metropolitan borough council.

(2) A sum equivalent to one-third of the amount which would be apportioned to the City and each metropolitan borough by way of county borough apportionment, if they were county boroughs and their weighted populations were calculated without any weighting for unemployment.

The balance of the county apportionment is the general Exchequer grant and is paid direct to the L.C.C. [482]

ADDITIONAL EXCHEQUER GRANT is, under sect. 99, calculated in a similar manner as for provincial county councils (r). [482A]

SUPPLEMENTARY EXCHEQUER GRANTS are provided under sect. 100 for the purpose of adjusting as between separately rated areas in the County of London any decreases or increases in the poundage of rates due to the operation of those parts of the Act dealing with the transfer of poor law functions, derating and the new grants, during the nineteen years from April 1, 1930. For these grants, there is ascertained under the Fifth Schedule (s) whether the operation of the above parts of the Act results in a gain or a loss to the area and the amount of it (sect. 100 (1) (a)). Where in any area a loss is disclosed, the amount which would otherwise be contributed by the area towards the general county rate is reduced for the first five years from April 1, 1930, by the full amount of the loss, and for each of the next fourteen years, by the amount of the loss reduced by one-fifteenth of it annually (sect. 100 (1) (b)).

The deficiency in the county rate is made good as to one-half out of monies provided by Parliament as a supplementary Exchequer grant, and as to the remainder by increasing the amount to be contributed to the county rate in each area in which a gain is disclosed by an amount proportionate to that gain (sect. 100 (1) (c)).

In London, as the gains and losses of separately rated areas are adjusted by means of a differential county rate, the supplementary Exchequer grant is paid to the L.C.C. and not to rating authorities as in the provinces. [483]

Grants to City of London and Metropolitan Borough Councils.—The amounts set aside out of the county apportionment of the L.C.C. as already explained are paid to the City of London and each metropolitan borough and represent the general Exchequer grants of these councils (sect. 98 (3)). [484]

Contributions to Public Health Services.—The M. of H. must before each grant period, after consultation with the authorities affected, make a scheme determining in relation to each voluntary association providing maternity and child welfare services in London, which of those services are such that the L.C.C., the council of the City of London and the metropolitan borough councils respectively should make contributions towards their cost (sect. 101 (6)). A scheme under sect. 102 (1) must also be made by the Minister providing for the payment of contributions by the Common Council of the City of London to voluntary associations which provide services for the welfare of the blind. [485]

(r) See *ante*, p. 214.

(s) See *ante*, p. 215.

TABLE OF WEIGHTED POPULATION.

STATEMENT TAKEN FROM PAGE 324 OF THE ANNUAL REPORT OF THE M. OF H. FOR 1933-34, SHOWING THE WEIGHTED POPULATION OF ENGLAND AND WALES FOR THE FIRST FIXED GRANT PERIOD AND AS PROVISIONALLY CALCULATED FOR THE SECOND FIXED GRANT PERIOD.

Type of authority.	FIRST FIXED GRANT PERIOD.						SECOND FIXED GRANT PERIOD.					
	Estimated population in 1928.	No. added for children under five years of age.	No. added for low rateable value.	No. added for unemployment.	No. added for mileage of roads.	Total weighted population.	Estimated population in 1932.	No. added for children under five years of age.	No. added for low rateable value.	No. added for unemployment.	No. added for mileage of roads.	Total weighted population.
Administrative county of London — — —	4,469,000	2,770,780	—	3,620	—	7,243,400	4,357,800	1,481,052	—	964,094	—	6,803,546
Administrative counties outside London — — —	21,711,171	12,754,165	10,209,443	3,922,268	13,812,130	62,409,177	22,444,299	10,809,972	10,197,821	9,658,925	12,796,529	65,907,546
County boroughs — — —	13,300,024	8,811,927	5,037,408	4,520,564	—	31,678,943	13,397,270	7,007,952	4,821,134	10,867,862	—	36,094,218
Isles of Scilly — — —	1,805	—	—	—	—	2,362*	1,631	—	—	—	—	2,536*
	39,482,000	24,356,872	15,246,851	8,455,472	13,812,130	101,333,882	40,501,000	19,299,576	15,018,955	21,400,881	12,796,529	108,807,846
Approximate percentage to weighted population — —	39	24	15	8	14	100	37	17	14	20	12	100

* Specially determined in accordance with Isles of Scilly Order, 1930.

[486]

METHOD OF CALCULATING EXCHEQUER GRANTS.

Grants to a County Council outside London.—The following exemplifications show the method adopted in calculating the general and additional Exchequer grants to a provincial county council. The first fixed grant period has been adopted as the material figures are now definitely fixed.

The relevant factors used for this hypothetical example are as follows :

Population for standard year (1928-29) - -	500,000
Weighted population for grant period (as calculated in the example given <i>ante</i> , p. 213)	1,250,833
	£
Loss of rates - - - - -	370,000
Loss of grants - - - - -	280,000

GENERAL EXCHEQUER GRANT.—The total general Exchequer contribution for the first fixed grant period was as follows :

	£
Loss of rates - - - - -	22,292,203
Losses of grants - - - - -	16,279,706
	38,571,909
New money - - - - -	5,000,000
Total - - - - -	£43,571,909

For this period, the county and county borough councils were allocated 75 per cent. of their losses of rates and grants, and the balance of the losses plus the whole of the new money on the "weighted population" basis. Therefore 75 per cent. of £38,571,909 was allocated direct (*i.e.* £28,928,932). The balance of the losses and the new money was distributed on the basis of weighted population as follows :

	£
25 per cent. of £38,571,909 - - - - -	9,642,977
New money - - - - -	5,000,000
Total - - - - -	£14,642,977

The total "weighted population" of England and Wales for the first fixed grant period was 101,333,882. Therefore the general Exchequer grant to the county council would be calculated as follows :

	£
75 per cent. of £650,000 (<i>i.e.</i> £370,000 plus £280,000) - - - - -	487,500
$\frac{1,250,833}{101,333,882} \times £14,642,977$ - - - - -	180,748
Total county apportionment - - - - -	£668,248

Out of this county apportionment would be set aside amounts sufficient to meet :

- (1) The capitation grants to borough and district councils under sect. 91 of the Act;
- (2) The grants to boroughs and district councils under sect. 93 which carry on maternity and child welfare services; and
- (3) Part compensation for loss of special and parish rates to rural district councils under sect. 92.

The remainder of the county apportionment would be the general Exchequer grant of the county council and would be paid direct to that council.

ADDITIONAL EXCHEQUER GRANT.—Under sect. 90 of the Act, if the county apportionment for the first fixed grant period fell short of the amount of the losses on account of rates and grants of that county increased by an amount equal to 1s. per head of the estimated population in the standard year (*i.e.* 1928–29), then an additional Exchequer grant equal to the deficiency was payable.

The additional Exchequer grant of the present county would be calculated as follows :

	£
Losses on account of rates and grants - - -	650,000
Add the equivalent of 1s. per head of estimated population in the standard year (500,000 at 1s. per head) - - - - -	25,000
	675,000
Less county apportionment as calculated above	668,248
	£6,752

[487]

GENERAL PURPOSES COMMITTEE

See also title: COMMITTEES.

In their constitution and in the nature and extent of the matters with which they deal the General Purposes Committees of different local authorities vary greatly. It is difficult to give any general description of their functions or their relations to the other committees of a council. In the smaller councils, the General Purposes Committee conforms most closely to its name. When the powers and duties of the council have been, by delegation or standing orders, distributed among the departmental committees, the General Purposes Committee is in effect a residuary legatee to which are assigned all such matters (being fit for consideration by a committee) as do not expressly or by implication come within the scope of any other committee. When the number of members of the council is small, the General Purposes Committee frequently comprises every member of the council. The result is that it becomes "the council in committee," performing much of the general business of the council, especially such as it appears undesirable to discuss in public, and presenting to the council its recommendations, for formal approval or confirmation where necessary. This may be carried so far that the public meetings of the council are more or less formal.

An example of the extended use of the General Purposes Committee is to be found in one of the largest county boroughs, the standing orders of which provide that all the members of the council shall be appointed the General Purposes Committee, and the council delegate to that committee (*inter alia*) all business which cannot be conveniently postponed until the next meeting of the council. [488]

In another important county borough the General Purposes Committee has no such general functions but is rather an estates committee,

its primary function being to regulate and manage the property of the corporation, including the markets.

In many of the larger councils, by reason of the large number of committees, and the great variety of the functions and undertakings, it becomes necessary that one committee should be related to them all in order that co-ordination among them may exist, and that all may conform to the general policy of the council. The General Purposes Committee then includes one or more representatives of each of the other standing committees. In some instances the chairman of each standing committee is *ex officio* a member of the General Purposes Committee; in others, each committee elects its own representative on that committee. The committee may also comprise other members appointed by the council. By reason of this representative character, it is sometimes provided by standing orders that any standing committee shall, in certain important matters, obtain the concurrence of the General Purposes Committee before taking any action or submitting any recommendation to the council. If any disagreement arises between committees, upon a matter in which more than one committee is concerned, the matter may be referred to the General Purposes Committee for decision.

The General Purposes Committee also, when so constituted, is usually charged with the consideration of the general distribution of the business of the council among the several standing committees, and the revision from time to time of their orders of reference, and also of the council's standing orders. Another matter frequently referred to a representative General Purposes Committee is the control of staff, including the fixing of the numbers of each department, the grading of the staff, and the fixing of salaries and superannuation schemes, or exceptional grants of salary or gratuities to members of the staff. Many councils, on the other hand, refer all such matters to a staff or establishment committee, but frequently except questions which concern chief officers or heads of departments.

As further examples of the matters commonly referred to the General Purposes Committee, particularly of a county council or county borough council, the following may be given: (i.) selection of persons for appointment as representatives of the council on joint boards, trusts, or other bodies; (ii.) proposals respecting the general organisation of the council's administrative work or expert reports thereon; (iii.) evidence to be given before Royal Commissions, Departmental Committees and other similar bodies; (iv.) arrangements for public ceremonial functions; (v.) making or revision of bye-laws for good rule and government; (vi.) selection of members to form deputations to Ministers or Government departments, or for conferences with other local authorities.

Less frequently, the administration of the Weights and Measures Acts, the Gas Regulation Acts and the health provisions of the Factory and Workshop Acts, 1901 and 1907, are referred to the General Purposes Committee.

The General Purposes Committee of a county council may be charged with the consideration of alterations of county boundaries, or those of urban and rural districts and parishes and electoral divisions and polling districts within the county, and similar matters; but by some councils these are referred to a local government committee. The promotion of and opposition to Bills in Parliament may be among the duties of the General Purposes Committee, but more commonly

these, with the conduct of litigation, are assigned to a standing legal and parliamentary committee. [489]

London.—The General Purposes Committee of the L.C.C. consists of one elected representative of each of the other standing committees, with the addition of a number of members appointed by the council. The committee exercises a general oversight over the administration and policy of the council and general matters affecting the council's service as a whole. The functions specifically referred to the committee include consideration of standing orders, orders of reference to committees, boundaries, elections, bye-laws for good rule and government, the appointment, dismissal, salaries and duties of heads of departments, determination of differences between committees, the preparation of statistics or annual reports, the relations of the council with other authorities, ceremonies involving the attendance of royal personages, and matters not within the order of reference to any other committee. [490]

GENERAL RATE

See RATES AND RATING.

GENERAL RATE FUND

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*See also titles : RATE COLLECTION ;
RATES AND RATING.*

Introduction.—The general rate fund is the principal fund kept by borough and district councils. So far as local authorities in the provinces are concerned, the fund was formed by sect. 10 of the R. & V.A., 1925 (a), which provided for the consolidation into one fund, viz. the general rate fund, as from the date of the first new valuation (*i.e.* April 1, 1928 or 1929), of all the existing rate funds kept for the whole of a borough or district. A reference in any Act or document to a fund thus superseded is to be construed, unless the context otherwise requires, as a reference to the general rate fund. This fund took the place of the borough fund and district fund in a borough, the district fund in an urban district and the fund for general expenses in a rural district. The law regulating the general rate fund of each such area is now embodied in Part VIII. of L.G.A., 1933 (b). The general fund of a county is the county fund, see title COUNTY ACCOUNTS at p. 134 of Vol. IV. [491]

(a) 14 Statutes 631.

(b) 26 Statutes 404.

General Rate Fund in Boroughs.—The general rate fund in boroughs is now governed by sects. 185 to 187 of the Act of 1933 (*c*), which provide as follows :

- (1) All the receipts of the council, including the rents and profits of corporate land, are to be carried to the general rate fund and all liabilities falling to be discharged by the council are to be discharged out of that fund.
- (2) An account known as "the general rate fund account" is to be kept of all receipts carried to and payments made from the general rate fund. Where any such receipts and/or payments concern part only of the borough, a separate account must be kept thereof.
- (3) If the general rate fund is more than sufficient for the purposes to which it is applicable, the surplus thereof may be applied under the direction of the council for the public benefit of the inhabitants and improvement of the borough.
- (4) If the receipts of the fund are insufficient (which is invariably the case), the deficiency is to be provided by the levy of a rate under the general power in sect. 186 of the Act and sect. 2 of R. & V.A., 1925 (*d*).

Payments from the general rate fund of a borough are made under the authority of sect. 187 of the Act of 1933, which provides as follows :

- (1) All payments to and from the fund are to be made to and by the treasurer.
- (2) Except as otherwise expressly provided (see below) all payments must be made in pursuance of an order of the council signed by three members and countersigned by the town clerk. The same order may include several payments.

But the following payments may be made without an order of the council, viz. payments (i.) in pursuance of the specific requirement of any enactment ; (ii.) in pursuance of an order of a competent court or of a justice of the peace acting in discharge of his judicial functions ; (iii.) in respect of the remuneration of the mayor, recorder (either in his capacity as such or as judge of the borough civil court), stipendiary magistrate, clerk of the peace (when paid by salary), clerk of the justices, or any other officer or person whose remuneration is payable by the council ; (iv.) in respect of the remuneration and allowances certified by the Treasury to be payable to them in relation to an election petition ; (v.) in respect of the remuneration certified by the recorder to be due to an assistant recorder, assistant clerk of the peace or additional crier.

Any person who may be aggrieved by an order of the council for the payment of money out of the general rate fund may appeal to the High Court whose order in the matter is final (sect. 187 (*g*)). [492]

General Rate Fund in Urban Districts.—In urban districts, this is now governed by sects. 188, 189 of L.G.A., 1933 (*e*), which provide as follows :

- (1) All receipts and payments of an U.D.C. are to be made to and from the general rate fund.
- (2) An account to be called "the general rate fund account" is to be kept of all receipts carried to and payments made out of the fund. Where any such receipts and/or payments concern part only of the urban district a separate account must be kept thereof.

- (3) The expenditure not otherwise provided for is met by the levy of a rate under the general power in sect. 189 of the Act and sect. 2 of R. & V.A., 1925 (f).

It will be observed that there are no provisions similar to sect. 187 for boroughs, regulating payments out of the general rate fund of an U.D.C. [493]

General Rate Fund in Rural Districts.—In rural districts, this is now governed by sects. 190 to 192 of L.G.A., 1933 (g), which provide as follows :

- (1) All receipts and payments of an R.D.C. whether on account of general or special expenses are to be made to and from the general rate fund of the district.
- (2) Separate accounts must be kept of receipts and payments in respect of general expenses and each class of special expenses respectively. The account kept for general expenses is known as "the general district account" and that for special expenses a special district account.
- (3) The expenditure on the general and special rate fund account is met by the levy of rates, in the case of general expenses over the whole district and in the case of special expenses over that part separately chargeable therewith, under the general powers contained in sect. 192 of the Act and sects. 2, 3 of R. & V.A., 1925 (f).

Here again there are no provisions similar to sect. 187 for boroughs regulating payments out of the general rate fund of an R.D.C. [494]

Recent Local Acts.—Some doubt has been felt as to the precise effect of the direction in sect. 185 (1) of the Act of 1933 that all receipts of a borough council shall be carried to the general rate fund. It has been pointed out that the sub-section cannot have intended to allow the receipts of an electricity undertaking of the council, the application of which is invariably governed by special enactments (*h*) to be applied to any of the purposes to which the local rate could be devoted. Sect. 194 of the same Act provides that nothing in Part VIII. thereof is to be deemed to require or authorise a local authority to apply or dispose of the surplus revenue arising from any undertaking carried on by them otherwise than in accordance with the provisions of any enactment or statutory order relating to that undertaking. Therefore the point should be met by maintaining a separate sub-account of the rate fund for electricity or any other undertaking the application of the receipts of which is restricted by special provisions. [495]

The councils of some boroughs have secured a clause by local Act (*i*) extending sect. 185 of L.G.A., 1933 (*k*), and authorising all monies received by the council, whether on account of capital or revenue, including the revenues of all trading undertakings and all interest arising from the investment of reserve and other special funds, to be carried to and form part of the general rate fund, and all payments not otherwise provided for, including trading undertaking expenditure,

(f) 14 Statutes 618.

(g) 26 Statutes 409, 410.

(h) See *e.g.* s. 7 of Schedule to Electric Lighting (Clauses) Act, 1899, printed 7 Statutes 709, as amended by Electricity (Supply) Act, 1926.

(i) See *e.g.* s. 35 of the Darlington Corp'n. Act, 1934 (c. xxxviii.), s. 86 of the Manchester Corp'n. Act, 1934 (c. xcvi.). An U.D.C. have also obtained the clause, see s. 147 of the Weston-super-Mare U.D.C. Act, 1934 (c. xciv.).

(k) 26 Statutes 407.

are to be made from that fund. By another clause interest on the investments of the reserve and other special funds is to be paid to the appropriate fund from the general rate fund. The object of this provision is to reduce the council's net liability to income tax, but again it would seem that any restrictions on the application of the receipts are retained by the clause. [496]

London.—In the case of the metropolitan borough councils, there does not appear to be any enactment prescribing the establishment of a general rate fund, but sect. 10 of the London Government Act, 1899 (*l*), provided for all the expenses of a borough council being paid out of the general rate.

In the City of London, a partial consolidation of rates into the general rate was made by sect. 15 of the City of London (Union of Parishes) Act, 1907 (*m*), but a poor rate is still levied separately under sect. 18 of the Act.

Under sect. 9 of the London Government Act, 1899 (*n*), all payments to and by a metropolitan borough council are made to and by the borough treasurer, and must, unless made in pursuance of the specific requirement of an Act of Parliament or of an order of a competent court, be made in pursuance of an order of the council signed by three members of the finance committee present at the meeting of the council and countersigned by the town clerk. Cheques issued in payment of monies under such an order must be countersigned by the town clerk or his approved deputy. Any such order may be removed into the High Court on a writ of *certiorari*, and the court may give such directions as it thinks desirable. [497]

(*l*) 11 Statutes 1231.

(*m*) 14 Statutes 605.

(*n*) 11 Statutes 1231.

GIFTS OF LAND AND OTHER PROPERTY

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See also titles : CHARITIES ;
CORPORATE LAND ;
DISPOSAL AND UTILISATION OF LAND ;
MORTMAIN.

Introductory.—A power to acquire and hold a limited amount of land, without a licence in mortmain, was usually conferred on the municipal corporation of a borough by the charter of incorporation, and sect. 107 of the Municipal Corporations Act, 1882 (*a*), allowed a municipal corporation, with no such power, to purchase or acquire land

with the approval of the M. of H. When county councils were constituted, they were given by sects. 65 and 79 of L.G.A., 1888 (*b*), a general power of acquiring land for the purpose of any of their powers and duties and of holding land for the purposes of their constitution without licence in mortmain. No general power of this kind was, however, possessed by district councils or parish councils; their powers were limited to the acquisition of land for the particular purposes specified in various enactments. As regards the power of a particular council to accept and hold a gift of land, *e.g.* for a park or recreation ground, it was generally accepted that where the appropriate enactment authorising an acquisition of land was not in such terms as to limit the power to an acquisition by purchase or for valuable consideration, a gift of land could be accepted and held by the council (*c*). The Education Act, 1921, however, the Housing Act, 1925, and other enactments mentioned *post* on p. 233, expressly authorised local authorities to accept gifts of land or property for specified purposes. [498]

Sect. 8 (1) (*h*) of L.G.A., 1894 (*d*), allowed parish councils to accept and hold any gifts of property, real or personal, for the benefit of the inhabitants of the parish or any part thereof. The following paragraph authorised them also to execute incidental works on such property (including works of maintenance or improvement). These powers might be conferred by order of the Minister of Health on the council of a borough or urban district (*e*). The anomaly that, in respect of the acceptance of gifts, parish councils should normally have wider powers than those of other councils has now been removed, and new and wider powers have replaced all the provisions already mentioned. Under sect. 268 of L.G.A., 1933 (*f*), the council of a county, borough, district, or parish may accept, hold and administer any gift of property, whether real or personal, for any local public purpose, or for the benefit of the inhabitants of the area or some part thereof. The section, however, does not authorise the acceptance of property to be held in trust for an ecclesiastical or an eleemosynary charity (*g*). Subject to this it is sufficient, therefore, if the gift is for any local public purpose or for the benefit of the inhabitants of the area or some part thereof. There is no definition of "local public purpose," and it would appear that the line of distinction between public and private purposes is sometimes difficult to draw (*h*). The purposes, however, are apparently not restricted to purposes for which the council are empowered to expend the local rate, but by sub-sect. (2) they may only expend money raised by rate on objects consequential on the acceptance of the gift where the purposes of the gift are purposes on which the council may expend money raised by rates.

(*b*) 10 Statutes 739, 750. Repealed, except as to London, by L.G.A., 1933.

(*c*) 15 Halsbury's Laws of England (2nd ed.), 704.

(*d*) 10 Statutes 780. Repealed by L.G.A., 1933.

(*e*) L.G.A., 1894, s. 33; 10 Statutes 798. Repealed by L.G.A., 1933.

(*f*) 26 Statutes 449.

(*g*) By L.G.A., 1933, s. 305 (26 Statutes 466), "ecclesiastical charity" has the same meaning as in L.G.A., 1894, s. 75 (10 Statutes 821). "Eleemosynary charity" is not defined; but see *Re Perry Almshouses, Re Ross's Charity*, [1899] 1 Ch. at pp. 24 and 34; 8 Digest 371, 1731. An eleemosynary corpn. is a corpn. established for the perpetual distribution of the free alms or bounty of the founder to such persons as he has directed, see 4 Halsbury (2nd ed.), 334; and Tudor on Charities, (5th ed.), p. 194.

(*h*) 4 Halsbury's Laws of England (2nd ed.), 110. For a statement of the principle deducible from the cases dealing with public and private purposes, see Tudor on Charities (5th ed.), at p. 12.

Nothing in sect. 268 is to affect any powers exercisable by a council under or by virtue of the Education Acts, 1921 to 1933. These powers are referred to in the following paragraph. Gifts of land for public purposes are not necessarily charitable (*i*). A gift of land accepted by a municipal corporation for a local public purpose or for the benefit of the inhabitants of the borough might come within the definition of "corporate land" and, subject to the terms of the gift, be subject to the enactments which govern dealings in corporate land (*k*). [499]

Gifts for Particular Purposes.—Local education authorities for elementary education have a special power to accept any real or personal property given to them as an educational endowment or upon trust for purposes connected with education (*l*), but they cannot accept any educational endowment, charity or trust the purposes of which are inconsistent with the principles on which the authority are required to conduct schools, and no power is given by the section to expend money for any purpose other than elementary education. This power to accept gifts is not to affect the law of mortmain or charitable uses (*m*), but certain exemptions from its restrictions are granted by the Act (*n*). A local authority for housing may accept donations of land, money or other property (*o*) for any of the purposes of the Housing Acts, 1925 and 1930, without the necessity for enrolment of any assurance under the Mortmain and Charitable Uses Act, 1888.

Councils of boroughs and urban districts with a population of 5,000 or more have certain powers in relation to the acquisition by gift and holding, without licence in mortmain, on trust for the benefit of their town, of any suburban common, *i.e.* a common situate wholly or partly in or within six miles of the borough or urban district (*p*). These powers may be exercised by any borough or urban or R.D.C. with the consent of the county council, as respects any common within the borough or district (*q*). [500]

A county council, borough council or district council, or any parish council invested with the powers of the Open Spaces Act, 1906, by an order of the county council, may under sects. 3 to 5 or 7 of that Act (*r*) accept land for the purpose of the same being preserved as an open space for the enjoyment of the public. Sect. 6 of the same Act enables any such council to accept a conveyance of any disused burial ground from the owner for the purpose of giving the public access to it and preserving the same as an open space.

The above are instances of express powers to acquire property for certain purposes by gift. [501]

Land held by trustees for any public purpose connected with a rural parish may, subject to the approval of the Charity Commissioners, be

(*i*) For instances of non-charitable public purposes, see 4 Halsbury's Laws of England (2nd ed.), 136. For the position of local authorities in accepting gifts for charitable purposes, reference should be made to the title CHARITIES, p. 96 *et seq.* of Vol. III.

(*k*) See title CORPORATE LAND.

(*l*) Education Act, 1921, s. 164; 7 Statutes 210; and see title EDUCATION.

(*m*) S. 164 (3).

(*n*) S. 117; 7 Statutes 193.

(*o*) Housing Act, 1925, s. 114; 13 Statutes 1064; Housing Act, 1930, s. 65; 23 Statutes 436.

(*p*) Commons Act, 1876, s. 8; 2 Statutes 583. See title COMMONS.

(*q*) L.G.A., 1894, s. 26; 10 Statutes 795.

(*r*) 12 Statutes 384—386.

transferred to the parish council (s) or to persons appointed by the parish council, but must continue to be held upon the same trusts and conditions. [502]

Letting, Sale or Exchange.—The general powers of letting, selling or exchanging land possessed by a local authority are set out in the title DISPOSAL AND UTILISATION OF LAND on pp. 17, 21 of Vol. V. But by sect. 179 (d) of L.G.A., 1933 (t), Part VII. of that Act does not authorise the disposal of land by a local authority, whether by sale, lease or exchange, in breach of any trust, covenant or agreement binding on them. Where land has been given to a council for a specified purpose, and it is desired to sell, let or exchange the land, the Charity Commissioners should be consulted, as to whether the proposed transaction can be put in order by a consent or other action of the Commissioners. [503]

London.—The powers of the L.C.C. to acquire, alienate or let land under sects. 64 (3), 65 of L.G.A., 1888 (u), are not affected by L.G.A., 1933, and may still be exercised. Similar powers under sects. 5 (2), 6 (5) of the London Government Act, 1899 (a), may be exercised by the metropolitan borough councils. These provisions seem to allow the L.C.C. or other council to accept a gift of land.

The local authorities in London for the purposes of the Open Spaces Act, 1906, are by sect. 1 of that Act (b), the L.C.C., the Common Council of the City of London and the metropolitan borough councils.

Under sect. 18 of the L.C.C. (General Powers) Act, 1925 (c), the council may, *inter alia*, accept as gifts lands, within or without the county, for purposes of sports, games or recreation. By sect. 11 (2) (a) of the L.C.C. (General Powers) Act, 1926 (d), for the purpose of eventually using as open spaces, etc., lands within or without the county, the council may, *inter alia*, acquire by the acceptance of a grant, and hold an estate in fee simple or any estate or interest less than an estate in fee simple in any such lands, notwithstanding that the acquisition of such an estate or interest may not confer the right of immediate possession. [504]

(s) L.G.A., 1894, s. 14 ; 10 Statutes 786.

(u) 10 Statutes 738, 739.

(b) 12 Statutes 382.

(d) *Ibid.*, 1380.

(t) 26 Statutes 404.

(a) 11 Statutes 1228, 1229.

(c) 11 Statutes 1372.

GLEBE LANDS

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See also titles : ALLOTMENTS ;
SMALL HOLDINGS.

On Sale Offer in Small Lots or for Allotments.—Sects. 2, 3 of the Glebe Lands Act, 1888 (*a*), referred to in this title as “the Act of 1888,” enable the incumbent of any benefice, after giving the prescribed notices to the bishop and to the patron, to apply to the Minister of Agriculture (*b*), to approve the sale of the glebe land of the benefice, or any part of it, except the parsonage house, or garden or other appurtenances of the parsonage house. Sect. 8 (1) of the Act (*c*) requires the Minister, in approving of a sale, either to make it a condition that the land or some part of it shall be offered for sale in small lots, for facilitating the acquisition of land by cottagers, labourers and others, or shall be offered for allotments to the sanitary authority for the district (*d*), unless the Minister satisfies himself that such offer is not practicable without diminishing the price which could be obtained. Such notice of a proposed sale must be given by the Minister under sect. 8 (2) as he thinks necessary for giving information to the parishioners. Under sect. 9 of the Act of 1888, the Minister may make rules with respect to proceedings under the Act. These rules will be found in the Sale of Glebe Land Rules, 1927 (*e*), sect. 1 of which provides that notice of the proposed sale must be given to the clerk of the county council, and to the clerk of the parish council, or, if the land is in a borough or urban district, to the town clerk or clerk of the U.D.C. The notices must be in form No. 4 in the schedule to the rules.

[505]

Subject to the provisions of the Act of 1888, the provisions of the Settled Land Act, 1925 (*f*), as to sales by a tenant for life apply so far as circumstances admit, and the incumbent has the powers of a tenant for life (sect. 8 (4)). The purchase-money is to be paid to the Minister

(*a*) 6 Statutes 904.

(*b*) The Act of 1888 entrusted the power of approval to the Land Commissioners ; their functions were transferred to the Board of Agriculture by the Board of Agriculture Act, 1889, and thence to the M. of A. & F. by the M. of A. & F. Act, 1919 ; 3 Statutes 451.

(*c*) 6 Statutes 908.

(*d*) But parish councils, not rural district councils, are now the allotments authority in a rural parish, see s. 23 of Small Holdings and Allotments Act, 1908 ; 1 Statutes 257.

(*e*) S.R. & O., 1927, No. 478.

(*f*) 17 Statutes 833.

whose receipt in the prescribed form (g) is a sufficient discharge (sect. 4 (1)). Sect. 43 of the Law of Property Act, 1922 (h), enables sales of glebe to be effected in consideration of a perpetual rent, or of a terminable rent consisting of principal and interest combined. Save that the notice to the bishop prescribed by sect. 7 of the Act of 1888 is substituted for the corresponding notice under sect. 1 of the Ecclesiastical Leasing Act, 1858 (i), nothing in the Act of 1888 limits or prejudices the powers and provisions contained in the Ecclesiastical Leasing Acts or in the Acts administered by the Governors of Queen Anne's Bounty (Act of 1888, sect. 11). [506]

Letting or Sale for Small Holdings or Allotments.—Sect. 40 (3) of the Small Holdings and Allotments Act, 1908 (k), enables the incumbent of an ecclesiastical benefice to lease glebe land (with the consent of the Ecclesiastical Commissioners alone, and on terms approved by the Commissioners) for a term not exceeding thirty-five years, for small holdings or allotments. Any such lease may be either with or without a right of renewal for a further term of not less than fourteen and not more than thirty-five years, at the option of the council, exercised by giving written notice to the incumbent, not more than two years, and not less than one year, before the expiration of the original term (l). The rent in respect of the additional term may, in default of agreement, be settled by a valuer appointed by the Minister of Agriculture (l). Sect. 48 of the Act of 1908 (m) provides that during the continuance of a tenancy of glebe land belonging to an ecclesiastical benefice, and hired for small holdings or allotments, the provisions of the Ecclesiastical Dilapidations Measure, 1923 (n), shall not apply to the buildings upon the land, and on the council quitting the land on the termination of the tenancy the incumbent may, with the consent of the Ecclesiastical Commissioners, pull down buildings which have been erected on the land for the purpose of adaptation as small holdings or allotments. [507]

Sect. 8 of the Land Settlement (Facilities) Act, 1919 (o), provides that on a sale to a council of land under the Ecclesiastical Leasing Acts for small holdings or allotments the consent of the patron is not necessary. *Semble*, notice to the patron is still necessary on an application for the approval of a sale under the Glebe Lands Act, 1888, but in such a case an approval of the sale by the Minister of Agriculture is necessary. [508]

Purchase Money or Compensation on Compulsory Acquisition.—Where purchase money or compensation was payable in respect of glebe land and amounted to £200, it had to be paid into the Bank of England

(g) Forms of receipt for purchase money and for instalments of annuity are contained in the Schedule to the Rules of 1927.

(h) S. 43 (6 Statutes 911) remains in force as regards glebe land (*vide* repeals contained in Sched. V. to Settled Land Act, 1925); a verbal error in s. 43 (8) is corrected by the Schedule to the Law of Property (Amendment) Act, 1926; 15 Statutes 549.

(i) 6 Statutes 875.

(k) 1 Statutes 268.

(l) See s. 44 of the Act of 1908; 1 Statutes 270.

(m) 1 Statutes 272.

(n) 6 Statutes 913. This Measure replaces the Ecclesiastical Dilapidations Act, 1871; 6 Statutes 894. By s. 53 (3) of the Measure, references in other Acts to the Act of 1871 are to be read as referring to the Measure of 1923.

(o) 1 Statutes 290.

under sect. 69 of the Lands Clauses Consolidation Act, 1845 (*p*). But where land is compulsorily purchased under a provisional order or order made under sect. 160 or 161 of L.G.A., 1933 (*q*), the above procedure is superseded by para. 3 of the modifications in the Sixth Schedule to the Act (*r*), which directs the money to be paid to the Ecclesiastical Commissioners, to be applied by them as money paid to them on a sale, under the Ecclesiastical Leasing Acts, of land belonging to a benefice. A similar provision will be found in para. (6) of the Schedule to the Development and Road Improvement Funds Act, 1909 (*s*), para. 8 in Part I. of the First Schedule to the Small Holdings and Allotments Act, 1908 (*t*), para. 2 (b) in Part II. of the First Schedule to the Public Works Facilities Act, 1930 (*a*), para. 2 (iv.) in Part I. of the Second Schedule to the Housing Act, 1930 (*b*), and para. 3 (iv.) in Part I. of the Third Schedule to the Town and Country Planning Act, 1932 (*c*), relating to compulsory purchase orders under these Acts. [509]

Restriction of Ribbon Development Act, 1935.—Compensation payable under sect. 9 of this statute in respect of injurious affection of glebe land by reason of restrictions imposed by or pursuant to sects. 1, 2 of the Act, is payable to the Ecclesiastical Commissioners to be applied by them as above (*ibid.*, sect. 9 (5)). [509A]

(*p*) 2 Statutes 1135.

(*r*) *Ibid.*, 508.

(*t*) 1 Statutes 280.

(*b*) *Ibid.*, 438.

(*q*) 26 Statutes 393, 394.

(*s*) 9 Statutes 218.

(*a*) 23 Statutes 778.

(*c*) 25 Statutes 530.

GOLF COURSES

See GAMES, PROVISION FOR.

GOOD RULE AND GOVERNMENT

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See also titles : BYE-LAWS ;
HIGHWAY NUISANCES ;
MODEL BYE-LAWS AND CLAUSES ;
NUISANCES.

Introductory.—Originally municipalities exercised their power to make bye-laws for the “good rule and government” of the borough under their Charters. The power was made statutory by the Municipal Corporations Act, 1835, its Common Law origin accounting for the vagueness of the words in which it was expressed. The consolidating Act of 1882 and the L.G.A., 1933, are no more definite. Authors of repute have thus been misled towards a tendency greatly to over-estimate the importance of this bye-law making function of municipal

corporations (a). On the face of things, the words used in the relevant enactments appear to give to municipal corporations legislative (or quasi-legislative) powers wide enough to cover the whole province of local administration. But when consideration has been given to the restrictions that have been placed on the exercise of the power by the Courts and the H.O., it will be seen that, though the power may be exceedingly useful, it only operates within a narrowly limited sphere. [510]

Power of Local Authorities to make Bye-Laws for Good Rule and Government.—The L.G.A., 1933, has codified the legislation dealing with bye-laws for good rule and government, sect. 23 of the Municipal Corporations Act, 1882 (b), and sect. 16 of the L.G.A., 1888 (c), which respectively conferred the power on municipal corporations and county councils, being now repealed. By sect. 249 of the L.G.A., 1933 (d), county councils and borough councils are authorised to make bye-laws for the good rule and government of the whole or any part of the county or borough, as the case may be, and for the prevention and suppression of nuisances therein (e). But bye-laws made by a county council are not to have effect in any borough within the county. All such bye-laws are now subject to the confirmation of the Home Secretary, unless they concern the functions of the M. of H. rather than those of the Home Secretary (f). Formerly, under sect. 23 of the Act of 1882 and sect. 16 of the Act of 1888, the bye-laws were not subject to confirmation strictly so-called, but came into force forty days after a copy had been sent to the Home Secretary, if not disallowed by an Order in Council.

In counties provision is made for the enforcement by the district councils of any of these bye-laws which may be in force in the whole or any part of the districts concerned (g). [511]

Interpretation of Powers.—The cases decided on sect. 23 of the Municipal Corporations Act, 1882, show clearly that the power to make bye-laws for "good rule and government" has been narrowly limited. A series of judgments, many of them delivered by MATHEW J., went far to destroying the power altogether. The matter came to a head in 1898, when a Divisional Court failed to agree in the case of *Brownscombe v. Johnson* (h), with the result that the Lord Chief Justice called together a special court to consider the issues involved. The judgments then delivered were of such authority that the case (reported as *Kruse v. Johnson* (i)), has, despite the dissenting judgment of MATHEW J., become a leading case of the first importance. Since 1898, the date of this decision, there appear to have been only two reported cases in which a bye-law under sect. 23 has been upset (k), though

(a) The following are instances: Grant on Corporations, 1850, p. 362; Somers Vine: English Municipalities, Their Growth and Development, 1879, p. 109; Redlich and Hirst: English Local Government, 1903, Vol. I., p. 327.

(b) 10 Statutes 584.

(c) *Ibid.*, 698.

(d) 26 Statutes 439.

(e) For the relationship between bye-laws for good rule and government and those for the suppression of nuisances, see title BYE-LAWS at p. 361 of Vol. II.

(f) L.G.A., 1933, s. 249 (2); 26 Statutes 440.

(g) *Ibid.*, s. 249 (5).

(h) (1898), 78 L. T. 265; see Digest Supp.

(i) [1898] 2 Q. B. 91; 13 Digest 326, 631.

(k) In *Nash v. Finlay* (1901), 85 L. T. 682; 33 Digest 163, 89; *Scott v. Pilliner*, [1904] 2 K. B. 855; 25 Digest 486, 333.

it is by no means certain whether this is wholly attributable to the clarifying effects of the decision, as administrative action on the part of the H.O. in disallowing bye-laws of doubtful legality may be partly responsible for the improvement.

The law remains obscure, and will remain so until the legislature adopts a more exact definition of what it means by "good rule and government." This may be seen by contrasting the decision in the case of *Thomas v. Sutters* (l) with that in *Scott v. Pilliner* (m). In the former a bye-law providing that "no person shall frequent or use any street or other public place on behalf either of himself or of any other person for the purpose of book-making or betting . . . with any person . . ." was held to be valid; and in the latter case, the Court decided (by a majority) that a bye-law prohibiting the frequenting and using of any street or public place "for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving" racing tips, was unreasonable, on the narrow ground that cases might arise where the sale of a paper not in aid of betting at all might be prohibited. A broad distinction may, however, be made between bye-laws which have been held to be valid and those which have been upset. The former include bye-laws prohibiting singing or the playing of instruments on a highway to the annoyance of inhabitants of a locality, or after the person offending has been required to desist (n); these are to be contrasted with similar bye-laws which merely contain an absolute prohibition, and which have been held to be invalid (o). Similarly bye-laws prohibiting the use of indecent language to the annoyance of other persons have been upheld when this restrictive clause has been inserted (p), and upset when it is absent (q). Other bye-laws which have been upheld include those prohibiting the throwing of refuse into the streets (r), and regulating the use of swings, roundabouts, and shooting galleries (s). Bye-laws which have been upset, on the other hand, include those which have sought to control street trading by children (t), and to prevent the annoyance of passengers in the streets (u). [512]

Scope of Bye-Laws for Good Rule and Government.—The limitations imposed on the bye-law making powers by the courts have narrowed the scope of these bye-laws. They are mostly concerned with public order and behaviour in streets and public places, and therefore are closely related to police administration. The variety of bye-laws that have been made in this connection, on the other hand, is very great; many of them (such as the bye-laws requiring the carrying of lights by bicycles and other vehicles) have prepared the way for general legislation. It has been stated by a former permanent Secretary of

(l) [1900] 1 Ch. 10; 25 Digest 435, 327.

(m) [1904] 2 K. B. 855; 25 Digest 436, 333.

(n) *R. v. Powell* (1884), 48 J. P. 740; 38 Digest 163, 94; *Booth v. Howell* (1889), 53 J. P. 678; 38 Digest 159, 64; *Kruse v. Johnson*, [1898] 2 Q. B. 91; 13 Digest 326, 631.

(o) *Johnson v. Croydon Corporation* (1886), 16 Q. B. D. 708; 38 Digest 159, 63; *Munro v. Watson* (1887), 57 L. T. 366; 38 Digest 159, 65.

(p) *Manile v. Jordon*, [1897] 1 Q. B. 248; 38 Digest 159, 61.

(q) *Strickland v. Hayes*, [1896] 1 Q. B. 290; 38 Digest 164, 97.

(r) *Batchelor v. Sturley* (1905), 93 L. T. 539; 38 Digest 161, 78.

(s) *Teale v. Harris* (1896), 60 J. P. 744; 38 Digest 159, 67.

(t) *Macdonald v. Lochrane* (1887), 51 J. P. 629; 38 Digest 158, 57. See, however, as to the statutory powers now enjoyed in this behalf, title EMPLOYMENT OF CHILDREN AND YOUNG PERSONS, Vol. V., p. 360.

(u) *Nash v. Finlay* (1901), 85 L. T. 682; 38 Digest 163, 89.

the H.O. that bye-laws submitted by local authorities require careful scrutiny; the H.O. has naturally had to have regard for the difficult legal position before deciding not to reject a bye-law. This has had the unfortunate effect that at one time so many bye-laws were rejected that the boroughs almost ceased to make them. After the H.O. undertook to examine all bye-laws in draft, and to state its objections to them at this stage, they regained their reputation. "Model bye-laws" have also been prepared by the H.O. dealing with such subjects as street music, street cries, street obstructions, and indecent acts, and these models have so far stood the scrutiny of the courts. New bye-laws are drafted from time to time as occasion requires (*a*). A bye-law dealing with the fouling by dogs of pavements has recently been widely adopted.

The H.O. has also emphasised the growing need for uniformity in bye-laws, as they often concern not only residents of the district to which they apply, but also, with the growth of motor traffic, persons who pass through it. Thus, a bye-law recently adopted in many localities regulates the conduct of persons in charabancs and other public vehicles (*b*). Finally, bye-laws are subjected to scrutiny by the H.O. from the point of view of public policy as well as that of legality. A bye-law was rejected, which aimed at the prevention of the littering of the streets with omnibus tickets, on the ground that it was undesirable to make trivial acts into criminal offences (*c*). The following list of matters dealt with by these bye-laws gives a rough indication of their usual content (*d*):

Advertising vehicles and bills, defacing pavements, etc.; betting in streets; bulls, etc., in streets; defacing milestones and signposts; fighting in streets; indecent bathing and shows, and nuisances contrary to public decency; loitering at church doors; music near houses, churches and hospitals; noisy animals and birds; noisy instruments, singing and noises by excursionists; offensive and threatening language; roundabouts, swings and shooting galleries; search- and flash-lights in streets; spitting in public places, etc.; touting or noisy hawking; violent behaviour on school premises; waste paper, refuse, broken glass, etc., in streets. [513]

London.—The L.C.C. have made, in pursuance of sect. 23 of the Municipal Corporations Act, 1882, and sect. 16 of the L.G.A., 1888, bye-laws for good rule and government of the Administrative County. The bye-laws deal with shooting galleries, roundabouts, noisy animals, street betting, street shouting, flash- and search-lights, public decency, window cleaning and painting, spitting, wastepaper, refuse, advertising bills, fruit rinds, organs in connection with roundabouts and shows, vehicular traffic (view of traffic), dickey straps, skid pans or lock chains and brakes, breakdown of vehicles in streets, slow moving traffic, whistling for cabs, disorderly behaviour on school premises, lamps marking road obstructions, throwing streamers from vehicles, ringing of alarm bells.

By virtue of sect. 5 (2) of the London Government Act, 1899 (*e*),

(*a*) "The Home Office," by Sir Edward Troup, Putnam, 1925, pp. 223—5.

(*b*) Royal Commission on Local Government, 1923, Minutes of Evidence, Appendix CXIX., M. 163.

(*c*) 92 J. P. 302.

(*d*) See Royal Commission on Local Government, 1923, Minutes of Evidence, pp. 143—4.

(*e*) 11 Statutes 1228.

metropolitan borough councils (but not the Corporation of the City of London) have the same powers of making bye-laws for good rule and government as the L.C.C. Certain borough councils have exercised these powers and have made bye-laws on a variety of matters, including nuisance by wireless loud speakers, fouling of footways by dogs, writing on the footway, roller skating on footways, and music near public buildings and hospitals. Where a bye-law of a borough council conflicts with a bye-law of the L.C.C., the latter prevails.

The sections referred to above have been repealed and replaced with modifications by Part VI of the L.C.C. (General Powers) Act, 1934 (*f*), but by sect. 76 of that Act the bye-laws previously made are preserved.

The Corporation of the City of London obtained under sect. 14 of the City of London (Various Powers) Act, 1933 (*g*), powers similar to those of the L.C.C. for the making of bye-laws for good rule and government, subject to a provision that the bye-laws shall not be inconsistent with those of the county council. [514]

(*f*) 27 Statutes 422.

(*g*) 26 Statutes 594.

GOVERNMENT AND LOCAL INSPECTORS

See also title: INQUIRIES.

The term "inspection" has been used by the Legislature to cover many different operations, and in some instances the title "Inspector" seems merely to have been adopted as a convenient one to indicate an official of superior rank. Thus inspection forms only a small part of the work of a police inspector, and the lighting inspectors who were formerly elected under sect. 17 of the Lighting and Watching Act, 1833 (*a*), were, like the surveyor of highways, the authority for the execution of that Act.

Aliens.—Inspectors are appointed by the Home Secretary for the administration of the Aliens Order, 1920, made under sect. 1 of the Aliens Restriction Act, 1914 (*b*), as amended by the Act of 1919 (*c*). [515]

Alkali and other Chemical Works.—Inspectors are appointed by the M. of H. under sect. 10 of the Alkali, etc., Works Regulation Act, 1906 (*d*), to inspect chemical works from which muriatic acid is evolved, and other chemical works. [516]

Anatomy Schools.—Inspectors of anatomy schools may be appointed by the M. of H. under sect. 2 of the Anatomy Act, 1832 (*e*), this power

(*a*) 8 Statutes 1190.

(*c*) *Ibid.*, 203.

(*e*) 11 Statutes 658.

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(*b*) 1 Statutes 201.

(*d*) 13 Statutes 899.

having been transferred from the Home Secretary by S.R. & O., 1920, No. 808. [517]

Anchors and Chain Cables.—An inspector of testing stations may be appointed by the Board of Trade under sect. 6 of the Anchors and Chain Cables Act, 1899 (*f*). [518]

Ancient Monuments.—Inspectors may be appointed by H.M. Commissioners of Works under sect. 16 of the Ancient Monuments Consolidation and Amendment Act, 1913 (*g*). [519]

Burial Grounds.—The M. of H. may appoint a person to inspect a burial ground or cemetery under sect. 8 of the Burial Act, 1855 (*h*), as amended by sect. 4 of the Burial Act, 1900 (*i*). [520]

Canals.—The Minister of Transport may appoint a person to inspect a canal, the works of which are dangerous or are such as to cause serious inconvenience or hindrance to traffic, under sect. 41 of the Railway and Canal Traffic Act, 1888 (*k*), as amended by sect. 2 of the M. of T. Act, 1919 (*l*). [521]

Children and Young Persons.—The power of the Home Secretary to appoint inspectors is now contained in sect. 103 of the Children and Young Persons Act, 1933 (*m*). [522]

Coal Mines.—The workmen employed in a mine may, under sect. 16 of the Coal Mines Act, 1911 (*n*), appoint two persons, not being qualified mining engineers, to inspect the mine on their behalf. The Board of Trade have power to appoint professional inspectors under sect. 97 of the Act (*o*), as amended by sect. 2 of the Mining Industry Act, 1920 (*p*). [523]

Corn (Price of British).—Officers of Inland Revenue may be appointed inspectors of corn returns under sect. 13 of the Corn Returns Act, 1882 (*q*). [524]

Dangerous Drugs.—A constable or other person authorised by the Home Secretary may, under sect. 10 of the Dangerous Drugs Act, 1920 (*r*), enter premises and inspect books or documents or stocks of dangerous drugs. [525]

Destructive Insects and Pests.—The Minister of Agriculture and Fisheries may by order authorise an inspector to remove or destroy infected crops under sect. 1 (1) of the Destructive Insects and Pests Act, 1927 (*s*). [526]

Diseases of Animals.—Inspectors are appointed by the Minister of Agriculture and Fisheries under sect. 5 of the Board of Agriculture Act, 1889 (*t*). A local authority under the Acts must appoint so many inspectors and other officers as they think necessary and at least one veterinary inspector under the Diseases of Animals Act, 1894, sect. 35 (*u*). [527]

- (*f*) 19 Statutes 675.
- (*h*) 2 Statutes 220.
- (*k*) 14 Statutes 240.
- (*m*) 26 Statutes 286.
- (*o*) *Ibid.*, 130.
- (*q*) 19 Statutes 557.
- (*s*) 1 Statutes 164.
- (*u*) 1 Statutes 408.

- (*g*) 12 Statutes 399.
- (*i*) *Ibid.*, 251.
- (*l*) 3 Statutes 422.
- (*n*) 12 Statutes 89.
- (*p*) *Ibid.*, 173.
- (*r*) 11 Statutes 759.
- (*t*) 3 Statutes 402.

Education.—Public elementary schools are inspected by H.M. Inspectors, who are appointed on the recommendation of the Board of Education (*a*). Non-provided schools may be inspected, at the option of the managers, by an inspector other than one of H.M. Inspectors (*b*). Secondary and private schools desiring inspection may be inspected by H.M. Inspectors (*c*). [528]

Eggs.—Authorised officers of county or county borough councils may inspect egg premises under sect. 4 (2) of the Agricultural Produce (Grading and Marking) Act, 1928 (*d*). [529]

Electricity.—The Electricity Commissioners may appoint an electric inspector, where the local authority are the undertakers, under sect. 35 of the Electric Lighting (Clauses) Act, 1899 (*e*), where that section has been applied to the undertaking by local Act or order. [530]

Endowed Schools.—H.M. Inspectors of Schools may inspect certain of these schools under sect. 3 of the Endowed Schools Act, 1873 (*f*). [531]

Explosives.—Inspectors of Explosives may be appointed by the Home Secretary under sect. 53 of the Explosives Act, 1875 (*g*), and duties as to explosives may be imposed under sect. 58 on inspectors of railways or merchant shipping. [532]

Factories and Workshops.—Inspectors are appointed by the Home Secretary under sect. 118 of the Factory and Workshop Act, 1901 (*h*). [533]

Fertilisers and Feeding Stuffs.—County and county borough councils must appoint such inspectors as are necessary under sect. 11 (1) of the Fertilisers and Feeding Stuffs Act, 1926 (*i*). [534]

Fisheries.—Inspectors may be appointed by the Minister of Agriculture and Fisheries under sect. 1 (5) of the Board of Agriculture and Fisheries Act, 1903 (*k*). [535]

Food and Drugs.—Officers of the Minister of Agriculture and Fisheries may enter and inspect margarine or butter factories under sect. 22 of the Food and Drugs (Adulteration) Act, 1928 (*l*). [536]

Gas.—Three gas referees must be appointed by the Board of Trade under sect. 4 of the Gas Regulation Act, 1920 (*m*), as in part repealed by the Gas Undertakings Act, 1934 (*n*). The referees will be superseded on January 1, 1939, when sect. 4 is wholly repealed; see sect. 12 (2) of the Act of 1934 (*o*). Gas examiners may be appointed under sect. 13 of the new Act (*p*) by a county council, borough council or U.D.C., who do not supply gas to the public, or by quarter sessions on an application made to them. [537]

Hospitals of Royal Foundation.—Under Statute 2 Hen. 5, Stat. 1, c. 1 (*q*), these are inspected by the Ordinary of the Diocese. [538]

(a) Education Act, 1921, ss. 27, 170 (9); 7 Statutes 142, 213.

(b) *Ibid.*, s. 183.

(d) 1 Statutes 167.

(f) *Ibid.*, 258.

(h) *Ibid.*, 580.

(k) 3 Statutes 408.

(m) *Ibid.*, 1282.

(o) *Ibid.*, 313.

(q) 2 Statutes 304.

(c) *Ibid.*, s. 184.

(e) 7 Statutes 727.

(g) 8 Statutes 417.

(i) 1 Statutes 147.

(l) 8 Statutes 898.

(n) 27 Statutes 302.

(p) *Ibid.*, 314.

Housing and Town Planning.—Inspectors are employed by the Minister of Health. [539]

Income Tax.—Inspectors of Taxes are appointed by the Treasury under sect. 75 of the Income Tax Act, 1918 (*r*), but must follow the directions of the Inland Revenue Commissioners. [540]

Inebriate Retreats or Reformatories.—Inspectors may be appointed by the Home Secretary, either under sect. 13 of the Habitual Drunkards Act, 1879 (*s*), or sect. 7 of the Inebriates Act, 1898 (*t*). [541]

Lunacy.—Under sect. 163 of the Lunacy Act, 1890 (*a*), visitors of lunatics may be appointed by the Lord Chancellor with the concurrence of the Treasury, and sect. 177 (*b*) requires the justices of every county and quarter sessions borough not within the area described in the Third Schedule, to appoint visitors of any licensed house for lunatics. [542]

Merchant Shipping.—Inspectors for the general purposes of the Merchant Shipping Act, 1894, are appointed by the Board of Trade under sect. 728 of that Act (*c*). A large number of surveyors of ships are appointed by the Board for various ports under sect. 724 of that Act. [543]

Metalliferous Mines.—Inspectors for the purposes of the Metalliferous Mines Regulation Act, 1872, may be appointed by the Board of Trade under sect. 15 (*d*) as amended by sect. 1 of the Mining Industry Act, 1920 (*e*). [544]

Methylated Spirits.—Power to inspect premises is given to officers of Inland Revenue by sect. 127 of the Spirits Act, 1880 (*f*); see definition of "officer" in sect. 3 of the Act (*g*). [545]

Milk and Dairies.—Under sect. 8 of the Milk and Dairies Order, 1926 (*h*), every county council and county borough council must cause to be made such inspections of cattle as are necessary and proper for the purposes of the Milk and Dairies (Consolidation) Act, 1915 (*i*), and of the Order. Veterinary inspectors may be appointed by a county council or sanitary authority under sect. 10 of the Act (*k*). [546]

National Health Insurance.—Inspectors are appointed by the M. of H.; National Health Insurance Act, 1924, sect. 92 (*l*). [547]

Petroleum Spirit.—Government inspectors under the Explosives Act, 1875, may inspect premises licensed under the Petroleum (Consolidation) Act, 1928, and require samples of petroleum to be given to them, under sect. 16 of that Act (*m*). Under sect. 14 an inquiry may be directed to be held by such an inspector into the cause of an accident. [548]

Pharmacy and Poisons.—The Pharmaceutical Society must appoint such number of inspectors (who must be registered pharmacists) as the Privy Council direct under the Pharmacy and Poisons Act, 1933, sect. 25 (*n*). [549]

(*r*) 9 Statutes 464.

(*i*) *Ibid.*, 958.

(*b*) *Ibid.*, 79.

(*d*) 12 Statutes 24.

(*f*) 16 Statutes 509.

(*h*) S.R. & O., 1926, No. 821.

(*k*) *Ibid.*, 870.

(*n*) 13 Statutes 1181.

(*s*) *Ibid.*, 949.

(*a*) 11 Statutes 75.

(*c*) 18 Statutes 406.

(*e*) *Ibid.*, 173.

(*g*) *Ibid.*, 473.

(*j*) 8 Statutes 864.

(*l*) 20 Statutes 549.

(*m*) 26 Statutes 581.

Police.—The Crown may appoint three Inspectors of Constabulary under sect. 15 of the County and Borough Police Act, 1856 (*o*). Ordinary police inspectors are appointed to a county police force under sect. 26 of the County Police Act, 1840 (*p*), by the standing joint committee, and by the watch committee of a borough which maintains a separate police force under sect. 191 of the Municipal Corporations Act, 1882 (*q*). In both instances the approval of the Home Secretary to the number of inspectors is required by the Police Regulations. [550]

Poor Law.—Poor law inspectors (now called general inspectors) are appointed by the M. of H. under sect. 9 of the Poor Law Act, 1930 (*r*). Women inspectors, by whom poor law infirmaries and boarded-out children are inspected, are also appointed by the Ministry under this section. [551]

Pre-Packed Articles of Food.—An inspector of weights and measures may inspect these articles under sect. 10 of the Sale of Food (Weights and Measures) Act, 1926 (*s*). [552]

Prisons.—Inspectors are appointed by the Home Secretary under sect. 7 of the Prison Act, 1877 (*t*). [553]

Public Health.—Inquiries may be directed by the M. of H. under sect. 293 of P.H.A., 1875 (*u*), on matters concerning the public health in any place, or with respect to which the sanction, approval or consent of the Minister is required by the Act. For these purposes, medical officers and engineering inspectors are appointed by the Minister, but in relation to inquiries into applications for sanction to loans, the last part of the section is superseded by sect. 290 of L.G.A., 1933 (*a*). [554]

Quarries.—Under sect. 2 of the Quarries Act, 1894 (*b*), the inspector of metalliferous mines is the inspector of quarries. [555]

Railways.—Inspectors are appointed by the Minister of Transport. They may be appointed for examination into the affairs of a railway company under sect. 6 of the Regulation of Railways Act, 1868 (*c*), and for inquiries into the causes of railway accidents under sect. 3 of the Regulation of Railways Act, 1871 (*d*), both sections having been amended by sect. 2 of the M. of T. Act, 1919 (*e*). [556]

Remand Homes.—The Home Secretary must cause these homes to be inspected under Children and Young Persons Act, 1933, sects. 78 (3), 103 (*f*). [557]

Roads.—Engineering inspectors are employed by the M. of T. in dealing with schemes for the construction and improvement of roads. [558]

Salmon and Freshwater Fisheries.—A fishery board may appoint inspectors under sect. 66 of the Salmon and Freshwater Fisheries Act, 1923 (*g*). [559]

Sanitary Inspectors.—The appointment in boroughs is made under sect. 106 of L.G.A., 1933 (*h*), in urban and rural districts under sect. 107

(*o*) 12 Statutes 815.

(*q*) 10 Statutes 636.

(*s*) 20 Statutes 423.

(*u*) *Ibid.*, 748.

(*b*) 12 Statutes 69.

(*d*) *Ibid.*, 192.

(*f*) 26 Statutes 217, 236.

(*h*) 26 Statutes 361.

(*p*) *Ibid.*, 794.

(*r*) 12 Statutes 974.

(*t*) 13 Statutes 338.

(*a*) 26 Statutes 459.

(*c*) 14 Statutes 176.

(*e*) 3 Statutes 422.

(*g*) 8 Statutes 822.

of the Act, and in London under sect. 107 of P.H. (London) Act, 1891 (*i*). [560]

Shops.—A local authority under the Shops Act, 1912, must appoint inspectors under sect. 13 of that Act (*k*). [561]

Theatres.—The L.C.C. may authorise persons to inspect theatres or places of public entertainment in London; see Metropolis Management and Building Acts Amendment Act, 1878, sect. 21 (*l*). [562]

Unemployment Insurance.—Inspectors are appointed by the Minister of Labour under sect. 12 (3) of the Unemployment Insurance Act, 1920 (*m*). [563]

Vivisection.—Inspectors may be appointed by the Home Secretary under sect. 10 of the Cruelty to Animals Act, 1876 (*n*). [564]

Voluntary Homes.—As to inspection by officers of the Home Secretary, or by officers of county, borough or district councils on his behalf, see Children and Young Persons Act, 1933, sects. 94, 103 (*o*). [565]

Weights and Measures.—Local authorities, for the purposes of the Weights and Measures Act, 1878, must under sect. 43 of that Act (*p*) appoint inspectors. Towns may also be authorised by charter or Act to appoint their own inspectors (sect. 54) (*q*). In London the inspectors of the L.C.C. have, by virtue of sect. 16 of the Weights and Measures Act, 1889 (*r*), exclusive powers except within the City of London. [566]

(*i*) 11 Statutes 1084.

(*l*) 19 Statutes 345.

(*n*) 1 Statutes 370.

(*p*) 20 Statutes 379.

(*r*) *Ibid.*, 398.

(*k*) 8 Statutes 621.

(*m*) 20 Statutes 666.

(*o*) 26 Statutes 230, 236.

(*q*) *Ibid.*, 383.

GOVERNMENT CONTROL

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INTRODUCTION

Local autonomy is recognised in constitutional law. Any power of the central government to coerce or supersede local authorities must be specifically conferred by statute (*a*). Since the Industrial Revolution

(*a*) Royal Commission on Local Government, Minutes of Evidence, Part I., 1923, Qs. 966—974.

the central government has tended to encroach more and more upon local autonomy, and with the growth of the social services during the last twenty-five years, necessitating the local disbursement of national funds, this tendency has increased.

The Poor Law Amendment Act, 1834 (*b*), instituted Government poor law inspectors and empowered the Government to make rules and orders governing details of local administration. Edwin Chadwick applied similar principles to the public health law. Meanwhile the grant-in-aid had appeared in the County and Borough Police Act, 1856 (*c*). Sect. 49 of the Sanitary Act, 1866 (*d*), gave the central government power to compel a local authority to carry out its duties by appointing some other body or person to carry them out. [567]

METHODS OF CONTROL (*e*)

General Supervision.—The degree of control exercised by a central department over the local authorities varies considerably. It is only in a very limited sense, for instance, that the H.O. accept any responsibility for the condition of the police forces of the country (*f*) or the M. of A. & F. for small holdings and allotments. These are matters where the responsibility rests almost entirely on the shoulders of the local authority. In most services, however, a central government department does accept a certain measure of responsibility, sometimes imposed on it by statute, for watching over the welfare of the service as a whole.

For instance, the function of the Minister of Health, as defined by sect. 1 of the M. of H. Act, 1919 (*g*), is that of "promoting the health of the people throughout England and Wales," that of the Minister of Transport being to improve "the means of, and the facilities for, locomotion and transport" (*h*), whilst the Board of Education are similarly charged with "the superintendence of matters relating to education in England and Wales" (*i*). Indeed, it may even be said that much the most important of the functions of these departments are connected, directly or indirectly, with the control of the local authority. This responsibility is perhaps strongest of all in the case of the Board of Education, who maintain continuous contact with local administration through their inspectors, and by their elaborate regulations so far reduce the scope of local administration that complaints are often made locally that little is left for the local administrator to do but to apply the decisions already arrived at by the Board to the local conditions. This is exceptional, and the public health service is more typical. Though in this service the M. of H. may do comparatively little in the way of instructing the local authority to deal with particular matters in one way or another, yet the Ministry are interested in the state of the public health services as a whole, and, if any extraordinary difficulty does arise, such as a local epidemic, they make suggestions

(*b*) 4 & 5 Will. 4, c. 76.

(*c*) 12 Statutes 812.

(*d*) 29 & 30 Vict. c. 90, superseded by s. 299 of P.H.A., 1875; 13 Statutes 750.

(*e*) See Royal Commission on Local Government, Minutes of Evidence, Part I., 1923, pp. 58 *et seq.*

(*f*) See Troup, "The Home Office," Putnam, 1925, p. 103.

(*g*) 3 Statutes 416.

(*h*) M. of T. Act, 1919, s. 1; 3 Statutes 422.

(*i*) Board of Education Act, 1899, s. 1; 7 Statutes 124.

through their medical inspectors for dealing with the problems. The annual report of the M. of H. gives an account of the state of the health of the country, which Parliament is able to discuss when the estimates of the Ministry are under consideration. The Minister must then naturally accept responsibility for seeing that any legislation that is needed is introduced. [568]

Grants-in-Aid. (k)—Grants-in-aid cannot be claimed by local authorities as of right; they are usually payable by the department concerned subject to conditions prescribed by a statute, and even then they may often be withheld if the discretionary power usually possessed by the appropriate Minister is exercised (l). The two main types of grants are the "percentage" grant, which bears a definite relationship to the cost of the service in respect of which it is paid, and the "block" grant, which is determined by factors independent of the cost. The history of the development of grants during the last fifty years has been largely a story of continued attempts on the part of the central government to dissociate the amount of grants from the amount of local expenditure, and to stabilise the financial situation either by giving the local authorities their own sources of revenue, or by introducing the independent, or "block" grant. But these attempts have so far failed that to-day the block grant can only be said to cover the public health services, and, to a certain extent roads, whilst education, police, and housing are still covered by percentage grants. From the administrative point of view the percentage grant encourages an expanding service, a consideration which often makes it as suspect to the central government as it is welcome to the local authority. In consequence percentage grants are usually payable only in respect of that part of the expenditure of the local authority which has been previously approved by the central government. This introduces a stabilising factor, but it detracts from local autonomy, and from the effectiveness of the system of local government. [569]

The Block Grant.—The general Exchequer grant, payable under the L.G.A., 1929, has absorbed the percentage grants formerly payable in respect of maternity and child welfare, blind persons, tuberculosis and venereal disease; it has also abolished all road percentage grants except classification grants payable in respect of Class I. and Class II. roads, and those paid towards the cost of new improvements. This does not mean that the central departments have lost all control over the services mentioned, since the Minister of Health is empowered by sect. 104 of the L.G.A., 1929 (m), to reduce the grant payable in any year by such amount as he thinks just, if (1) he considers that a local authority have failed to achieve or maintain a reasonable standard of efficiency and progress in their public health services, and that the health or welfare of the inhabitants of the area is likely in consequence to be endangered; or (2) if he is satisfied that the expenditure of the local authority has been excessive or unreasonable; or (3) if the Minister of Transport is satisfied that the local authority has failed to maintain their roads in a satisfactory condition. Should these powers be exercised, and a reduction made, the Minister of Health has to lay a report before Parliament

(k) See titles GENERAL EXCHEQUER GRANTS and GRANTS.

(l) Where an Act of Parliament establishes a grant-in-aid without giving a Government department power to withhold a portion of it, it appears that a petition of right will lie against the Crown if the grant is not paid. See *Dublin Corp'n. v. R.*, [1911] 1 Ir. R. 83; *Kildare County Council v. R.*, [1909] 2 Ir. R. 199.

(m) 10 Statutes 948.

stating the amount of the reduction, and his reasons for making it. These powers are in many respects stronger than those possessed by the central government before the abolition of the percentage grants. In the first place, the power to reduce a grant now applies to all public health services, instead of merely to those in respect of which a percentage grant was formerly payable. Secondly, the local authority are now required to maintain a reasonable standard of *progress*, and it would appear to be the better opinion that this requires the local authority to institute new services, as and when required, as well as to improve those already existing. Again the Act of 1929 gives a new power to the Minister to reduce a grant where, in his opinion, the expenditure of the local authority has been excessive or unreasonable. [570]

Percentage Grants.—The education grants which are now paid to local education authorities amount roughly to 50 per cent. of the cost of elementary and higher education (*n*). The Board of Education may make regulations determining the conditions to be attached to the payment of these grants, and they may also reduce grants if their regulations are not complied with. The regulations now in force set out the following conditions which the local education authority must observe, if grants are to be earned: (i.) that the authority must duly perform their duties under the Education Act, (ii.) that the regulations regarding schools have been duly complied with, and (iii.) that all returns and information required from the local authority by the Board of Education are supplied (*o*). It is also provided that the local authority must pay their teachers the recognised scales of salary: if they do not do so the grant may be reduced by the amount by which the salaries paid fall short of what the cost to the local authority would otherwise have been (*p*). Finally, if the local education authority do not observe due economy, the Board may reduce any "additional grant" which is payable (*q*). It is also to be observed that, when the grants are calculated, any amounts not previously "recognised" by the Board will be excluded from the expenditure on which they are based. If the "substantive grant" is reduced by £500 or by the produce of a halfpenny rate, the Board must make a report to Parliament, stating the amount of the reduction, and the reasons for it (*r*). [571]

The police grant, on the other hand, is an example of a percentage grant the payment of which lies solely in the discretion of a department of the central government, in this case the H.O. The effect of the L.G.A., 1929, has been to abolish the old procedure whereby the grant only became payable if the Home Secretary issued a certificate to the effect that a police force was efficient in point of numbers and discipline. If this certificate was withheld, the police authority were given a certain safeguard against arbitrary action on the part of the Home Secretary, in that he was obliged to lay a report before Parliament (*s*). The central government are now in a far stronger position. As there is now no Act which *requires* the payment of any grant at all in respect of police services, there are naturally no statutory conditions which attach to the grant paid by the executive action of the Home Secretary, who appears in consequence to possess despotic powers over

(*n*) See title EDUCATION FINANCE at p. 170 of Vol. V.

(*o*) Elementary Education Grant Regulations, 1932, Art. 6.

(*p*) *Ibid.*, Art. 7.

(*q*) *Ibid.*, Art. 4.

(*r*) Education Act, 1921, s. 118 (4); 7 Statutes 194.

(*s*) County and Borough Police Act, 1856, s. 16; repealed by L.G.A., 1929.

the police authorities and police forces of the country. Since the grant amounts to one-half of the approved expenditure of the police authority, few of them, if any, would willingly take any step which might incur a risk of its withdrawal. The police grants formerly payable have now been merged with the grant administered by the H.O.; and the grant as a whole will be payable in future subject only to the conditions attaching to the payment of the supplementary Exchequer grants (t).

[572]

Approval of Loans (u).—For the most part the function of sanctioning loans desired by a local authority is concentrated in the hands of the M. of H.; this applies even where some other department, such as the Board of Education, or the M. of T., are concerned with the service for which the loan is to be spent. In such cases, however, the M. of H. act on the advice of the other department as to the merits of the application, and restrict their attention to the purely financial considerations involved. Exceptions to the general rule exist in that the M. of T. sanction loans for tramways and light railways, and the Electricity Commissioners deal with electricity loans desired by councils with electricity undertakings. In the last case, however, there is a statutory obligation on the Electricity Commissioners to consult the M. of H. before a decision is arrived at. The matters with which the M. of H. are most concerned when the approval of a loan is under consideration are, first, the desirability of the proposed works, particularly as regards their design and suitability, and whether they are planned on an extravagant scale; secondly, the financial strength of the local authority concerned; and lastly, whether the local authority ought to carry out some other more urgent public work in preference to that for which a loan is proposed. These points are usually investigated at a local inquiry held by an engineering inspector of the Ministry.

The marketing of an issue of stock by a local authority is subject to regulation by the Treasury, acting through the Bank of England, in order to prevent such competition of municipal loans with Government borrowing as would raise the market rate of interest of such borrowing.

A Parliamentary Committee have suggested that the Ministry and other departments should submit an annual programme of estimated sanctions, which would enable a comprehensive survey to be made of the position, including the effect of the proposed commitments on future budgets (a).

The consent of the M. of H. is required by nearly every public general statute which authorises a local authority to borrow money. The only method of borrowing of any importance which may not involve this consent is where a loan is authorised by a local Act—though even in this event the Ministry report to Parliament on the proposal. But the vast majority of local loans are raised under general Acts subject to the sanction of the Ministry—only about one-tenth of the total sum raised being borrowed under local Acts. [573]

Audit.—The various classes of accounts which are subject to audit by the district auditors of the M. of H. are set out on pp. 501, 502 of Vol. I.

(t) H.O. Circular 489450/69, 1930. See also title GENERAL EXCHEQUER GRANTS.

(u) See Royal Commission on Local Government, Minutes of Evidence, Vol. I., p. 58.

(a) Second Report of Select Committee on the Estimates, 1932, pp. xvii.—xxv. *Ibid.*, 1933, pp. iii., xxiii.

Whether the system of district audit is strictly a matter of Government control is arguable. The auditors appointed by the M. of H. occupy an independent position in some respects; indeed, the Minister has specifically disclaimed any responsibility for their acts, stating that he had never attempted to give a district auditor instructions, and that their actions had on more than one occasion been the cause of embarrassment (b). And the sweeping power, given to the Minister by the Local Authorities (Expenses) Act, 1887 (c), to prevent the disallowance of specific items of expenditure by means of a sanction given by him has only been very sparingly exercised, the Ministry having stated that the Act was not intended to fill in gaps in legislative powers, but to enable cases to be dealt with where auditors might raise technical objections, or where emergencies made expedition desirable or necessary in the absence of legal authority (d). Though the scope of the central government audit has thus been restricted, it has become a matter of serious controversy, since in practice it is very difficult to determine the point at which the exercise of a discretionary power under a statute is stretched so far that it becomes *ultra vires* (e). As a matter of general principle, local authorities cannot exceed the specific powers given to them by statute, and if the exercise of these powers is to be reviewed by the district auditor from what really amounts to the point of view of their reasonableness, as well as from that of their legality in the narrower sense, members of local authorities will be apt to act with excessive caution. It is to be remembered that a surcharge of more than £500 now involves a disqualification from being a member of the authority for a period of five years (f), as well as the more obvious financial liability. [574]

Inspection.—This power is of importance in the public assistance, education, police and public health services. The central government are endowed with the strongest powers in connection with public assistance, for by sect. 9 of the Poor Law Act, 1930 (g), an inspector of the M. of H. may visit and inspect every workhouse or place where any person in receipt of poor relief is lodged, and may attend any meeting of a public assistance authority, or of any committee or sub-committee, and take part in the proceedings. The strength of this provision is indicated by the fact that the only limitation placed on the powers is that an inspector may not vote at a meeting which he attends. It is the duty of the inspector to maintain contact with the work of the public assistance authority, and by persuasion and advice guide them on a policy approved by the Ministry. In the last resort the inspector can make an adverse report to headquarters when, if necessary, other powers can be brought into play to secure the compliance of the local authority. A considerable measure of responsibility rests upon the inspector, as, owing to the fact that the grant-in-aid plays little part in public assistance administration, he must keep the central government in touch with the local authority. The system of inspection is also relied on in police and educational administration, and to a certain extent also in public

(b) Parliamentary Debates, Fifth Series, 1927, Vol. CCXI., Col. 2121.

(c) 10 Statutes 686. Repealed by L.G.A., 1933, and replaced by the proviso to s. 228 (1) of that Act; 26 Statutes 429.

(d) M. of H. Annual Report, 1929-30, p. 159.

(e) See *R. v. Roberts*, [1908] 1 K. B. 407; 33 Digest 40, 217; *Roberts v. Hopwood*, [1925] A. C. 578; 33 Digest 20, 83.

(f) L.G.A., 1933, ss. 59, 229, 230; 26 Statutes 334, 430.

(g) 12 Statutes 974.

health. Education is the only other service which is in any way comparable in this matter with public assistance. Here the system of inspection is closely linked up with the grant-in-aid, for the complexity of the financial arrangements is such that every local authority finds it necessary to keep in continuous touch with the central government through the inspectors. They on their part are empowered to inspect the practical working of the schools, as it is provided that every school shall be kept open to inspection by them (*h*). The practice of carrying out an annual inspection of every police force by inspectors appointed by the H.O. is also extra-statutory. It is in the same way dependent on the grant system. The power has proved to be quite sufficient for the purpose, and the suggestions as to the improvement of the forces made by the inspectors have usually been carried into effect. The powers of inspection given to the M. of H. have not been used to the same extent, as, although public health inspectors have the same right as public assistance inspectors to attend meetings and take part in the proceedings at them (*i*), their work has for the most part been restricted to the investigation of specific matters, such as outbreaks of disease, proposals to borrow money for works, or the periodical overhaul of one local service or another, at considerable intervals. The divisional engineers of the M. of T. are also in fact, though not in name, inspectors, as it has been stated by the Ministry that their function is to facilitate the supervision and co-ordination of road works throughout the country, and to give general advice to the local authorities concerned (*k*). They are thus able to keep in personal contact with them and give close attention to local needs and problems. [575]

Information and Advice.—Government departments perform a useful function by collecting and publishing statistics and other information relating to local government. They thus perform in this country many of the services entrusted in other countries to "bureaux of governmental research," to associations of local authorities or to other voluntary bodies. It is provided by sect. 284 of L.G.A., 1933 (*l*), for instance, that every local authority shall make such reports and returns to the H.O. and the M. of H. as they may require. It is not suggested that Government departments do all that could be done in this direction, but it is nevertheless true that the annual reports they issue are exceedingly valuable publications, and such special publications as the Refuse Disposal and Hospitals and Institutions Costing Returns may have a profound effect on the efficiency of the services with which they deal. The central departments are, again, always ready to assist a council with information and advice regarding any specific point that may be brought to their notice. [576]

Subordinate Legislation.—The powers of the central government under this head are extremely diverse, varying from the function of approving a bye-law to the making of regulations and schemes controlling the administration of the Poor Law Act, 1930, or the Education Act, 1921 (*ll*). The strongest power of this nature is that entrusted to the Minister of Health by sect. 136 of the Poor Law Act, 1930 (*m*),

(*h*) Education Act, 1921, s. 27 (1) (*c*); 7 Statutes 142.

(*i*) L.G.A., 1933, Sched. III., Part III., para. 5; 26 Statutes 499.

(*k*) Royal Commission on Local Government, Minutes of Evidence, Part II., 1923, p. 383.

(*l*) 26 Statutes 456.

(*ll*) 7 Statutes 130.

(*m*) 12 Statutes 1036.

which authorises him to make such orders and regulations as he thinks fit for (i.) the management of the poor, (ii.) the government of the workhouses and the education of the children therein, (iii.) the guidance and control of the public assistance authorities and their officers, and for prescribing the officers' duties, (iv.) the making of contracts, and (v.) generally for carrying the Act into execution. This sweeping power has been described by the recent Committee on Ministers' Powers as a remarkable instance of a delegated power to legislate on matters of principle, and an exception to what the Committee conceived to be the normal type of delegated legislation (*n*). Nearly every local government statute of importance authorises the issue of rules and regulations of the more normal type, as it would be quite impossible for Parliament to attempt to insert the necessary details in every Act passed by them. Typical statutes authorising the making of regulations are the R. & V.A., 1925, and the Road Traffic Act, 1930. The only legislative power possessed by a Government department at all comparable with that given by the Poor Law Act, 1930, is the power of the Board of Education to prescribe the details of the system of educational administration by the issue of the Educational Code and the Education Grant Regulations. Good examples of the power to legislate for a local authority by approving a draft scheme submitted to the department by the local authority are the schemes which are necessary in connection with public assistance (*o*), town planning (*p*), and the education services. In the last case the scheme may give the department the power to legislate not only in respect of administrative detail, but also in matters of policy as well, since sect. 11 of the Education Act, 1921 (*q*), requires schemes which are submitted for confirmation to provide for the "progressive development" of the services provided. Another function carried out by subordinate legislation is the conferring of powers on local authorities of one type or another. For example, the M. of H. may confer on an R.D.C. any of the functions conferred on an U.D.C. by a general Act (*r*).

[577]

Local Legislation.—If the Minister of Health withholds his approval under sect. 254 of the L.G.A., 1933 (*s*), to the promotion by the council of a county, borough or district of a private Bill (*t*), the council cannot proceed further with the Bill. But it is not the practice of the Ministry to consider the merits of a Bill at this stage; in general the Ministry only see that all the necessary formalities have been observed. When the Bill comes before the Parliamentary Committee, however, the department concerned present a report to the Committee on the Bill, in which the merits may be discussed. The functions of the M. of H. in the promotion of provisional orders and Bills for their confirmation are more important, for the merits must be investigated at a local inquiry and a decision reached as to whether an order shall be made (*u*).

[578]

(*n*) Cmd. 4060, pp. 30, 31.

(*o*) Poor Law Act, 1930, ss. 4—6; 12 Statutes 971—3.

(*p*) Town and Country Planning Act, 1932, ss. 11, 12; 25 Statutes 484, 485. See also title TOWN PLANNING SCHEMES.

(*q*) 7 Statutes 135.

(*r*) P.H.A., 1875, s. 276 (13 Statutes 741); L.G.A., 1933, s. 272 (26 Statutes 451).

(*s*) 26 Statutes 443.

(*t*) See title BILLS, PARLIAMENTARY AND PRIVATE.

(*u*) See title PROVISIONAL ORDERS.

Administrative Appeals.—Government departments, especially the M. of H. and the M. of T., have in recent years had conferred on them a large number of powers of a quasi-judicial nature; see the title **APPEALS TO MINISTERS** in Vol. I. [579]

Status of Officers.—In certain services the central government have attempted to secure that the officers of local authorities are qualified to hold posts for which they are candidates. This policy has been furthered by making the approval of a department necessary to the appointment of an officer in certain cases, whilst in others it is provided by statute or by departmental regulation that a candidate must possess specified technical qualifications appropriate to the post before he can be appointed to it. Control of this character has sometimes arisen in connection with grants-in-aid. An early instance of this was the grant, equal to one-half of the salary of M.O.H. or sanitary inspector, given to those sanitary authorities who chose to observe the somewhat stringent regulations made by the Local Government Board concerning the qualification, appointment, duties, salary and tenure of office of these officers. The position is now somewhat obscure, owing to the changes that have recently taken place in the grant system. But it may in general be said that the M. of H. has power to prescribe the qualifications and duties of all such officers who are employed by borough or district councils (*a*). It is provided by sect. 17 (2) of the M. of T. Act, 1919 (*b*), that the Minister may pay one-half of the salary of an engineer or surveyor, provided that the appointment, retention and dismissal of the occupant of the post be subject to his approval (*c*). It is believed, however, that few of the larger local authorities have adopted this course. A member of a police force may appeal against dismissal to the Home Secretary, and the appointment or dismissal of the chief constable is also subject to his approval, for reasons that are again connected with the grant system (*d*). The requirement that the consent of a Government department shall be obtained to the dismissal by the local authority of an officer is for the purpose of protecting an efficient officer against dismissal as being too zealous in the discharge of his duties. In some instances, the central department may dismiss an officer, but this power has been obtained because a local authority have been known to endeavour to retain the services of an officer who has been shown to be dishonest.

The clerk of a county council, who generally fills the office of clerk of the peace as well, cannot be dismissed without the consent of the M. of H. (*e*), but the reason for this has a long and complicated history of its own. The status of officers is dealt with in the titles **APPOINTMENT AND DISMISSAL OF OFFICERS** and **OFFICERS OF LOCAL AUTHORITIES**. [580]

Control over Poor Law Officers.—The powers of the central government over poor law officers are much stronger than those over other local officials. The powers given to the Minister of Health by sect. 10 of the Poor Law Act, 1930 (*f*), are very strong indeed. He may order a public assistance authority to appoint any officers he thinks necessary for the administration of the relief of the poor, and he can prescribe

(*a*) L.G.A., 1933, s. 108 ; 26 Statutes 363.

(*b*) 3 Statutes 435.

(*c*) See title **BOROUGH ENGINEER AND SURVEYOR**.

(*d*) See titles **BOROUGH POLICE, CHIEF CONSTABLE, COUNTY POLICE**.

(*e*) L.G.A., 1933, s. 100 ; 26 Statutes 359.

(*f*) 12 Statutes 974.

such qualifications for them as he thinks necessary. The salaries of these officers must be paid by the authority, and the Minister is empowered to define their duties, to direct the mode of their appointment, and determine their continuance in office or dismissal. Sect. 13 of the Act (g) allows him to remove or suspend any officer of a public assistance authority whom he considers unfit or incompetent, or who refuses to carry into effect the Minister's rules, orders or regulations. He may also require the authority to appoint a fit and proper person in the place of a dismissed officer. Thus the poor law officer can, in the last resort, be brought under the direct control of the Minister of Health, who may continue an officer in his employment after he has been dismissed by a public assistance authority, or dismiss an officer for preferring the authority's directions to those of the Minister. If full use were made of these powers, the functions of the public assistance authorities would be reduced to vanishing point. [581]

Default Powers.—Government departments have broad powers to act on the default of a local authority, but they are rarely put into effect; their usefulness to the central government springs not from the action actually taken under them, but chiefly from the value of having a "big stick" which can be used in extreme cases (h). It has, for instance, been stated by a former Permanent Secretary of the M. of A. & F. that the default powers given by the Small Holdings and Allotments Act, 1908 (i), with the object of making it possible for the central government to coerce reluctant or backward local authorities, have proved largely unnecessary. In the only case where they were actually used, the local authority concerned was not unwilling to hand over their responsibilities to the central government (k); see title DEFAULTING AUTHORITY. [582]

Appointment of Members.—One-third of the members of the agricultural committee of a county council are appointed by the M. of A. & F. (l). This is a new departure from the ordinary principles of local government, and has been strenuously opposed by the county councils on a number of occasions (m). The only later example of a similar power occurs in sect. 3 of the Land Drainage Act, 1930 (n), which permits the appointment of one member of each catchment board (out of a maximum total membership of thirty-one) by the M. of A. & F. [583]

(g) 12 Statutes 976.

(h) Royal Commission on Local Government, Minutes of Evidence, Part I., 1923, q. 1690.

(i) 1 Statutes 257.

(k) Floud, "The Ministry of Agriculture and Fisheries," Putnam, 1927, p. 146.

(l) M. of A. & F. Act, 1919, s. 7; 3 Statutes 454. See also title AGRICULTURAL COMMITTEES.

(m) See Royal Commission on Local Government, Minutes of Evidence, Part I., 1923, q. 1623.

(n) 23 Statutes 530.

GOVERNMENT DEPARTMENTS

See GOVERNMENT CONTROL and under names of Departments.

GRADED MILKS

See MILK AND DAIRIES.

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See SAFETY PROVISIONS OF BUILDINGS AND STANDS.

GRANTS

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See also titles : EDUCATION FINANCE ;
GENERAL EXCHEQUER GRANTS ;
GOVERNMENT CONTROL.

Introduction.—Government grants in aid of local services have long been recognised as an important factor in local government finance. The number of individual grants was considerably reduced by the L.G.A., 1929, although the total sum paid was increased. [584]

Principles Involved.—The Government make grants in aid of the cost of certain services administered by local authorities for the following reasons : (1) to contribute to the cost of those services which are semi-national in character, but which owing to their nature can be more efficiently administered by local authorities, *e.g.* education and police ; (2) to secure for the Government a measure of control over the administration of such semi-national services ; (3) to correct, as far as possible, inequalities brought about by the system of local taxation, *e.g.* the levy of local rates on real property alone. The national system with its wider range is more equitable and tends to adjust the inequalities of burden as between districts and individuals. [585]

In a white paper published in 1928 (a) by the M. of H., the view was expressed that any proper system of grants in aid should : (1) recognise that a fair contribution should be made towards the cost of local services ; (2) ensure that authorities have complete financial interest in their administration, and permit the greatest freedom and initiative therein ; (3) be adaptable to the conditions of different areas ; (4) provide for such control by the Government departments as to ensure a reasonable standard of efficiency in the administration of the particular service or group of services concerned. [586]

Alternative Methods of Assessing Grants.—Grants in aid are made on a number of bases. The most important of these are given below.

Percentage Basis.—The grant on this basis is an amount equivalent to a predetermined percentage of the approved net expenditure of the authority on the particular service concerned. This basis has the advantage of being related to the actual expenditure incurred, but has been criticised as tending to encourage local extravagance, expenditure being increased above the sum normally necessary in order that more grant may be earned. From the point of view of local authorities the method is held to be unsatisfactory, in that it entails a detailed supervision by the Government department concerned. The chief objection raised against this type of grant is that it does not take into account the needs of different areas. The less prosperous the area, the less able is the local authority to incur the expenditure by means of which the grant is earned. [587]

Block Grant.—A grant of a definite total sum for a particular service or group of services; the amount being often fixed for a period of years and distributed to the authorities concerned on suitable bases. An excellent example of this is the general Exchequer contribution under the L.G.A., 1929. This type of grant obviates the objections already indicated. In addition, the authorities are able to estimate their revenue from this source in advance. The chief difficulty is to find a really equitable basis for calculation, especially as the amount is often fixed for a period of years. Generally, however, provisions are included in the governing enactment for a periodical examination and revision of the basis of assessment. [588]

Unit Grant.—The payment of a uniform amount per unit adopted for the purpose of the service; the grant often being given for a period of years, and sometimes ceasing at the end of that period. An example is the grant given under sect. 26 of the Housing Act, 1930 (b), for slum clearance purposes. This type of grant has the advantage of being definite in amount, and, as it is not based on expenditure, it does not tend to encourage local extravagance, nor does it entail detailed supervision by the Government. Its principal disadvantage lies in the difficulties which may be created by variations in costs throughout the country, which may render the incidence of the grant unfair as between one district and another. This problem is often overcome by provision in the governing enactment for higher rates of grant in those areas where the costs of administering the service are particularly heavy. An example of this is the increasing scale of grant payable for the erection of flats for the relief of overcrowding under sect. 31 of the Housing Act, 1935. [589]

Special Formula Grant.—This grant is assessed on a special formula and often involves the partial adoption of one of the other methods, usually either the percentage or the unit basis. An example is the grant given in aid of expenditure on elementary education. The method has been successful with certain services, and has the advantage of meeting what is probably the most important principle of any system of grants, viz. that the formula can be so arranged as to meet the needs of different areas. In so far, however, as it is based on any other system, notably the percentage basis, it has the disadvantages of that system. [590]

Assigned Revenues.—In this instance, grants as such are not made in aid of local services, but in lieu of them specified national revenues are assigned direct to the local authorities. This system was introduced by sects. 21 to 23 of L.G.A., 1888 (c), but was substantially modified

(b) 23 Statutes 416.

(c) 10 Statutes 701—703. Repealed by L.G.A., 1929.

by the L.G.A., 1929. The method is open to the criticism that the revenues assigned are related neither to the expenditure nor to the needs of local authorities. It is now of little importance, being confined to a direct collection by authorities of certain local taxation licences. [591]

Grants Payable to Local Authorities.—On pp. 259—262, *post*, is a statement of the grants now payable to local authorities in England and Wales. In compiling it no attempt has been made to show the relative importance of the various grants to the local authorities concerned, although it will be obvious that some grants are much larger in amount and in importance than others. For the bases of the various grants reference should be made to the appropriate individual title of this work. [592]

London.—Apart from the general Exchequer grants under the L.G.A., 1929, the grants to London authorities are generally on the same basis as for the rest of the country. London, in common with the county boroughs, does not now receive direct grants from the Road Fund for maintenance of roads, these having been merged in the general Exchequer grant under the Act of 1929. The undermentioned points may be noted :

The L.C.C. receive under sect. 18 of the Metropolitan Fire Brigade Act, 1865 (*d*), a special grant of £10,000 from H.M. Treasury towards the cost of the London Fire Brigade (see also title LONDON FIRE BRIGADE). [593]

The L.C.C. recoup deficiencies of metropolitan boroughs under the Housing, Town Planning, etc., Act, 1919, and contribute towards deficiencies under other Housing Acts (see also sect. 31 of the Housing Act, 1930 (*e*), under which the council and metropolitan borough councils may contribute towards each other's housing schemes). [594]

Contributions by the L.C.C. to local improvements (s. 144 of the Metropolis Management Act, 1855 (*ee*), and by the metropolitan boroughs towards county improvements are of frequent occurrence (Metropolis Management (Amendment) Act, 1862, s. 72 (*f*)). [595]

So far as the cost of residential treatment of tuberculosis is deemed to fall on the rates it is borne by the county council ; approved cost of dispensary treatment is divided between metropolitan boroughs and the county council. [596]

With regard to maternity and child welfare, since the introduction of the general Exchequer grant, the county council now pay grants formerly paid to voluntary associations by the M. of H. The remaining facilities in respect of this service are provided by the borough councils. [597]

The provision of mental hospitals for persons of unsound mind falls on the L.C.C., who assumed the functions of the visiting committee under the Lunacy Acts by virtue of sect. 34 of the L.C.C. (General Powers) Act, 1915 (*ff*), but the city corporation are responsible for the cost of accommodation for city patients, the county council being responsible for the cost of accommodation for the remainder of the London patients. [598]

With regard to the metropolitan police, the net expenses relating to the part of the police area within London are met by precepts of the police authority on the borough councils. With regard to the City Police, although the net cost is met by the City Corporation, the corporation receive, in respect of police, one-half of the net cost from the Government less the proceeds of a City rate of 4*d*. in the £. The Government grant for the Metropolitan Police is one-half of the net cost. [599]

(*d*) 11 Statutes 1001.

(*e*) 23 Statutes 421.

(*ee*) 11 Statutes 920.

(*f*) 11 Statutes 984.

(*ff*) 11 Statutes 1330.

STATEMENT OF THE GRANTS PAYABLE TO LOCAL AUTHORITIES IN ENGLAND AND WALES.

Title of Grant and purpose for which given.	L.As. entitled.	Central Department.	Relevant Authority.
Afforestation.—In aid of expenditure on works of afforestation.	County, borough and district councils.	Forestry Commissioners.	Forestry Act, 1919, s. 3.
Agriculture.—Refund of cost of administration of county agricultural committee.	County councils.	M. of A. & F.	M. of A. & F. Act, 1919, s. 8 (4).
Children and Young Persons.—To expenditure on children committed to remand homes for whom authority is responsible for maintenance.	County and county borough councils.	H.O.	Children and Young Persons Act, 1933, s. 104 and regs.
Approved Schools.	Managers of Approved schools.	Do.	Do.
Boarding out of children and young persons committed to authority's care.	Elementary education authorities.	Do.	Do.
Conveyance of Prisoners.—Refund of expenditure on removal of remanded prisoners where Prison Commissioners are responsible.	Police authorities.	Do.	—
Diseases of Animals.—Refund of compensation paid for animals slaughtered under orders relating to tuberculosis in cattle.	County and county borough councils; certain non-county borough councils.	M. of A. & F.	Diseases of Animals Act, 1925, and Tuberculosis Order, 1925.
Education.—To expenditure on—			Education Act, 1921, and Education Grant Regs.
Elementary Education.	Elementary education authorities.	Board of Education.	Do.
Higher Education.	Higher education authorities.	Do.	Do.
Adult Education.	Do.	Do.	Do.
Secondary Education.	Do.	Do.	Do.
Special Education.	Do.	Do.	Do.
Agricultural Education.	Do.	Do.	Do.
Training Colleges for Teachers.	Do.	Do.	Do.
Intermediate Education in Wales and Monmouthshire.	Education authorities.	Do.	Welsh I.E. Act, 1889, and L.G.A., 1929, s. 82.
Exchequer Grants.—General, Additional and Supplementary Exchequer Grants in aid of local rates generally.	County, borough and district councils.	M. of H.	L.G.A., 1929, and regs.
Health Visitors.—To cost of training.	County and county borough councils and certain borough and district councils.	Do.	Maternity and Child Welfare Act, 1918, and L.G.A., 1929, s. 93.
Highways.—To cost of—			
Classified roads.	County councils outside London.	M. of T.	Roads Act, 1920 (continued by L. G. A., 1929).

Title of Grant and purpose for which given.	L.As. entitled.	Central Department.	Relevant Authority.
Highways.— <i>contd.</i> Works of reconstruction and improvement.	Highway authorities.	M. of T.	Development and Road Improvement Funds Act, 1909, Part II., and Road Traffic Act, 1930, s. 57 (2).
Highway surveyor's or engineer's salary and expenses.	Do.	Do.	M. of T. Act, 1919, s. 17 (2).
Installation of new weighbridges or expenditure on use of weighbridges for weighing motor vehicles.	Do.	Do.	Road Traffic Act, 1930, s. 57 (3).
Acquiring toll roads and bridges.	Do.	Do.	Road Traffic Act, 1930, s. 53, and regs.
Constructing pedestrian crossings.	Do.	Do.	Road Traffic Act, 1934, s. 18, and regs., s. 1.
Compensation on prescription of building and improvement lines on classified roads.	Do.	Do.	Regs. of M. of T.
Housing.—To loss incurred on— Provision of dwellings for the working classes.	Housing authorities.	M. of H.	Housing (Additional Powers) Act, 1919; Housing Act, 1923; Housing (F. P.) Act, 1924; Housing Acts, 1925 and 1935; and regs.
Rehousing schemes.	Do.	Do.	Housing Act, 1930, s. 26.
Provision of dwellings for rural workers.	Do.	Do.	Housing (Rural Workers) Act, 1926, s. 4; Housing Act, 1935, ss. 33, 37, 38, 39.
Clearance and Improvement Areas and Rehousing Schemes.	Do.	Do.	Housing Acts, 1930, s. 26; 1935, ss. 31, 32.
Provision of flats.	Do.	Do.	Housing Act, 1935, ss. 31, 32.
Provision of houses by Housing Associations.	Do.	Do.	Housing Act, 1935, s. 27 (3).
Guarantees to Building Societies making advances for Housing development.	Do.	Do.	Housing (F.P.) Act, 1933, s. 2.
Inebriates Homes.—To cost of maintenance of persons detained in Inebriate Reformatories.	County and county borough councils.	H.O.	Inebriates Act, 1898.

Title of Grant and purpose for which given.	L.As. entitled.	Central Department.	Relevant Authority.
Juvenile Employment.—To expenditure on— Administration of Juvenile Employment Centres.	Higher education authorities.	Ministry of Labour.	Unemployment Insurance Acts, 1923, s. 6, and 1934, Fifth Schedule. Do.
Choice of employment scheme for juveniles.	Do.	Board of Education.	
Land Drainage.—To expenditure of County Drainage Committee in exercising drainage powers and carrying out drainage schemes.	County councils.	M. of A. & F.	Land Drainage Act, 1930, s. 55.
M.O.H., Sanitary Inspectors and Public Vaccinators.—Contribution towards salaries, etc., of these officers.	Borough and district councils. Port sanitary authorities.	County and county borough councils.	L.G.A., 1929, Sched. III., 1933, s. 109.
Midwives Training.—In respect of students completing courses.	County and county borough councils.	M. of H.	Midwives Act, 1918, s. 11; Midwives Training regs.
Police.—In aid of expenditure on— Police (including pensions). Motor Patrols.	Police authorities. Do.	H.O. Do.	H.O. regs. Road Traffic Act, 1930, s. 57 (4). Regs. of M. of T.
Traffic Census.—In aid of expenditure on this service.	Highway Authorities.	M. of T.	
Port Sanitary Authorities.—In aid of expenditure on— Administration. Medical inspection of aliens.	Port Sanitary Authorities. Do.	M. of H. Do.	Regs. of M. of H. Do.
Probation of Offenders.—In aid of expenditure.	County and county borough councils.	H.O.	Probation of Offenders Act, 1907, and regs.
Rates on Crown Property.—Contributions in lieu of rates on Crown property exempt from rates.	Rating authorities.	Treasury.	Treasury Minutes.
Registration of Electors.—One-half of cost of compiling and printing Register of Electors.	Registration authorities.	Do.	Representation of People Act, 1918, s. 15 (4), and regs.
Registration and Licensing of Motor Vehicles.—Refund of cost of collection.	County and county borough councils.	M. of T.	Roads Act, 1920, s. 3, and regs.
Scientific and Industrial Research.—In aid of expenditure on investigations.	Do.	M. of H.	—
Small Holdings.—Recoupment of losses incurred by local authorities as shown by 1926 valuation.	Do.	M. of A. & F.	Land Settlement Facilities Act, 1919, s. 27, and amending Act of 1925.
To losses on schemes under the Act.	Do.	Do.	Small Holdings & Allotments Act, 1926, s. 2.

Title of Grant and purpose for which given.	L.As. entitled.	Central Department.	Relevant Authority.
Tithe rentcharge; rates where attached to benefice.	Rating authorities.	Commissioners of Inland Revenue.	Tithe Act, 1925, s. 7; L.G.A., 1929, Sched. III.
Traffic Signals.—To cost of erecting and maintaining automatic traffic signals.	Highway authorities.	M. of T.	Road Traffic Act, 1930, s. 48; 1934, s. 1.
Tuberculosis.— Block Grant in connection with National Health Insurance.	County and county borough councils.	M. of H.	Memo. of M. of H.
Refund of cost of residential treatment of ex-service-men.	Do.	Do.	Do.
Repayment of costs of services performed for Ministry by Tuberculosis Officers.	Do.	Do.	Do.
Unemployment.—To expenditure on— Approved schemes for the relief of unemployment.	All authorities.	M. of H. and Unemployment Grants Committee.	Various Acts and Unemployment Grant Committee's Circulars.
Establishment and maintenance of classes for unemployed juveniles and other unemployed persons under Part II. of Act of 1934.	County and county borough councils.	Ministry of Labour.	Unemployment Act, 1934, ss. 37, 47, and regs.

[600]

GRANTS, HOUSING

See HOUSING SUBSIDIES.

GRANTS, ROAD

See ROAD GRANTS.

GRATINGS

See ROAD PROTECTION.

GRAVEL PITS FOR HIGHWAY PURPOSES

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GRAVES

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See VALUATION LIST.

GUARANTEES OF OFFICERS

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See also titles :

APPOINTMENT AND DISMISSAL OF OFFICERS ;	INSURANCE FUNDS OF LOCAL AUTHORITIES ;
DUTIES AND POWERS OF OFFICERS ;	OFFICERS OF LOCAL AUTHORITIES ;
	STAFF.

Introduction.—The practice of requiring an officer of a local authority to give security for the due performance of his duties is an old-established principle of Local Government, although the classes of officers to which it has been applied and the form of guarantee have varied from time to time. The main purpose of the guarantees is to safeguard the local authority against losses arising through the dishonesty of an employee. [601]

Older Legal Provisions.—One of the earliest enactments relating to security will be found in sect. 6 of the County Rates Act, 1738 (*a*), requiring a county treasurer to give sufficient security in such sums as the county justices approve. Sect. 7 of the Poor Relief Act, 1819 (*b*),

(*a*) 13 Statutes 417. Repealed by the L.G.A., 1933, except as to London.

(*b*) Repealed by the R. & V.A., 1925.

authorised the taking of security by bond for the faithful execution by an assistant overseer of his office, and under sect. 61 of the Poor Law Amendment Act, 1844 (*c*), every collector of poor rates or assistant overseer was bound to give the board of guardians sufficient security for the due performance of his duties. Later, sect. 194 of the P.H.A., 1875 (*d*), directed sanitary authorities to take from every officer who might be entrusted with the custody and control of money sufficient security for the faithful execution of his office and for duly accounting for the moneys entrusted to him. Sect. 20 of the Municipal Corporations Act, 1882 (*e*), required officers of borough councils to give such security as the council might think proper, but was not limited to officers entrusted with the custody and control of money, and this section was applied to county councils by sect. 75 of the L.G.A., 1888 (*f*). By sect. 17 (*g*) of the L.G.A., 1894 (*g*), the treasurer of a parish council was to give such security as the county council might by regulations prescribe.

The officers of rating authorities were required by sect. 55 of the R. & V.A., 1925 (*h*), to give security, but here a new principle was introduced in that the authority might bear the cost of providing the security. Previously the council could not pay the premium on a guarantee policy, although they could fix the officer's salary in recognition of the fact that such a premium was paid by him. Sect. 10 of the Poor Law Act, 1930 (*i*), required officers of the public assistance authorities to give security of such amount and nature as the M. of H. might prescribe. [602]

Present Legal Requirements.—The whole of the law already indicated has now been replaced by sect. 119 of the L.G.A., 1933 (*k*), which provides a complete code as to the security of officers of all county, county borough, borough, district and parish councils outside London. Sect. 119 may be summarised as follows: Any such council, other than a parish council, must in the case of an officer employed by them who is likely to be entrusted with the custody or control of money, and may in the case of any other officer employed by them, either require him to give or themselves take such security as they may think sufficient for the faithful execution of his office and for his duly accounting for all money or property entrusted to him (sub-sect. (1)). The council may at their own discretion defray the cost of providing the guarantee (sub-sect. (4)). Any such council, other than a parish council, may in the case of a person not employed by them, but who is likely to be entrusted with the custody and control of money or property belonging to the council, take such security as they think sufficient for his duly accounting therefor (sub-sect. (2)). This is an entirely new departure and the council must in this case defray the cost of the guarantee. A parish council must require their treasurer to give, or may themselves take, such security for the faithful execution of the office as the county council may direct (sub-sect. (3)). Every security must be produced to the auditors at the audit of the council's accounts (sub-sect. (4)). [603]

Principal Modes of Guarantee.—The methods by which security has been provided have varied. The earliest form was that of the personal

(c) 14 Statutes 510. Repealed except as to London by L.G.A., 1933.

(d) 13 Statutes 709.

(f) *Ibid.*, 746.

(h) 14 Statutes 678.

(k) 26 Statutes 369.

(e) 10 Statutes 583.

(g) *Ibid.*, 789.

(i) 12 Statutes 974.

bond entered into with a third party who acted as guarantor. This had disadvantages, especially in view of the personal nature of the transaction and in addition the financial standing of the guarantor was not always reliable.

Personal bonds have been almost entirely superseded by guarantee policies issued by insurance companies. In consideration of an annual premium based on the risk of loss and the sum covered by the policy, the company undertake to make good any loss sustained by the employer within that sum. The risks covered vary. Some policies are restricted to fraud, dishonesty or other neglect of duty of the employee arising in the execution of the duties of his office. Others go further and afford a complete cover for almost every risk which might arise in the course of the relationship between the council and their employee, *e.g.* they cover risks such as a theft of funds in the possession of the officer. For example, a policy can now be obtained which will cover *inter alia* the following risks: (1) Losses arising through the fraud or dishonesty of an employee in the execution of his specific duties; (2) The risk of an employee passing irregular or fictitious invoices in favour of nominees and thus improperly obtaining money from the council through the nominees; (3) Losses arising through theft, fraud or burglary, or through the dishonesty of an employee, whether in the execution of his specific duties or not; (4) Losses arising from an employee's default and neglect of duty. [603A]

The following are usual types of policy:

(1) *Individual Policy*.—This covers to a named amount the person named or the person holding a specified position. [604]

(2) *Collective Policy*.—One policy is issued covering several named persons to a specified maximum for each. When an employee leaves the council's service, his successor's name is substituted, but the premium remains unaltered. Sometimes a policy covers specified offices, no reference being made to the names of the individuals holding them. A floating item is usually included to cover new appointments and temporary employees. In both of the above classes of policy a maximum is imposed on the sums payable by the company during the currency of the policy, and often in addition a smaller maximum for a claim arising on any one loss. Another variation is that the policy may name certain officers, with a specified maximum against each, but with a floating amount available as an addition to the specified sum, should it prove insufficient in the event of a loss. This means that each officer is covered to the amount shown against his name, plus the floating amount should the necessity arise, with a limit on the amount which may be claimed for any one loss and a higher maximum on claims arising during the currency of the policy. [605]

(3) *Floating Policy*.—This is the most comprehensive policy obtainable. It normally covers all officers and servants of the council without naming them or the positions which they hold. It specifies the maximum payable by the insurance company in any one year and sometimes also a limit for any one loss. The time and trouble involved in the frequent alterations of names and offices is thus obviated. All officers and servants are automatically covered, including new appointments and staff absorptions.

Local authorities usually defray the cost of providing fidelity guarantee policies for their officers. [606]

Insurance Funds of Local Authorities.—Many of the larger authori-

ties have obtained power in local Acts to establish insurance funds, and some of them now carry their own fidelity guarantee risk. A yearly sum, usually equal to the premiums which would be payable to insurance companies had the cover been effected in that way, is credited to the fund and invested, all claims being paid from the fund as they arise; see the title **INSURANCE FUNDS OF LOCAL AUTHORITIES**. [607]

London.—Sect. 75 of the L.G.A., 1888 (*l*), which applied to county councils sect. 20 of the Municipal Corporations Act, 1882 (*m*), still applies to the L.C.C. as sect. 119 of the L.G.A., 1933, does not extend to London. The L.C.C. bear the cost of the insurance premiums and take out the necessary policies. Sect. 65 of the Metropolis Management Act, 1855 (*n*), required district boards and vestries to take from any officer or servant who might be entrusted with the custody or control of money such security as they might think sufficient for his duly accounting for the same. This provision now applies to metropolitan borough councils, as the successors of district boards and vestries under the London Government Act, 1899. [608]

(*l*) 10 Statutes 746.

(*m*) *Ibid.*, 583. See also *ante*, p. 264.

(*n*) 11 Statutes 894.

GUARDIANS COMMITTEE

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See also titles : CASE PAPER SYSTEM ;
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RELIEVING OFFICER.

Creation by Schemes.—The administration of poor relief by county councils is governed by administrative schemes originally made under the L.G.A., 1929, but the provisions which they must contain are now determined by the Poor Law Act, 1930 (*a*). In addition to setting up a public assistance committee in each county, a scheme must also provide for (i.) the division of the county into a number of areas for the administration of public assistance ; (ii.) the composition of local sub-committees of the public assistance committee known as guardians

committees for each of these areas; (iii.) the determination of the methods whereby consultation between the public assistance committee and the guardians committees is to be effected; (iv.) the appointment of the places at which the guardians committees hold their meetings; and (v.) the delegation of functions to these committees by the council (b). The M. of H. is given power of dispensing with these provisions, for if a county council make a representation that special circumstances exist in their area, he may direct that sect. 5 shall not apply to the county in question, or to a part of it (c). [609]

Guardians Committee Areas.—By sect. 5 (1) of the Poor Law Act, 1930, every county is to be divided into a number of areas for the administration of public assistance, their number and size to be determined by the administrative scheme. The only principles laid down by the Act which the Scheme must observe are: (i.) every area must consist of one or more non-county boroughs or districts, and (ii.) the areas must not overlap county boundaries. The main object of these provisions, which are a re-enactment of those contained in sect. 7 of L.G.A., 1929, was set out in the general circular issued by the M. of H. at the time of the passing of that Act (d). Briefly, the tendency was to increase the area over which local government services are administered in order to obtain greater uniformity, efficiency and economy (e). At the same time it was realised that it was vitally important to retain personal contact in the administration of poor relief. It was recognised that the adoption of the county as the basic area for this purpose might at first lead to too great a degree of centralisation, and this tendency was corrected by the creation of guardians committees, to whom the actual work of granting relief locally was entrusted. Steps were taken to ensure that relief would be granted in close association with the recipients, by localising the work of the committees, and by constituting them to a defined extent out of members of the borough and district councils (f). [610]

The question of guardians committee areas formed the subject of a special memorandum issued by the Ministry (g). As to an argument put forward in some quarters that continuity could best be secured by preserving the union areas, it was stated that the contention rested on a serious misconception of the effect of the L.G.A., 1929. The principles according to which relief is or is not granted remain untouched by that Act, but the functions formerly dealt with by the boards of guardians which did not relate to relief, in the narrower sense of the word, are fundamentally changed, provision being made for the transfer of many

(b) Poor Law Act, 1930, ss. 5 (1)—(3), (5), (6), 163; 12 Statutes 971, 972, 1047.

(c) *Ibid.*, s. 5 (7).

(d) M. of H. Circular 1000 of 1929.

(e) *Ibid.*, para. 31. In certain densely populated areas such as Lancashire and the West Riding, the Act had, to a certain extent, a contrary effect, as the removal of the county boroughs from the jurisdiction of the county public assistance authority restricted the area of administration. The West Derby poor law union in Lancashire, for instance, contained the county boroughs of Liverpool and Bootle, as well as several non-county boroughs and urban districts. The separation of the county borough from the county has in many cases caused serious difficulty, as the county borough was often the geographical centre of the old union, and remains the centre to-day of many guardians committee areas, with the result that the meetings of these guardians committees take place in the county borough, and complicated agreements are necessary for the joint use of institutions.

(f) *Ibid.*, para. 41.

(g) Memorandum L.G.A., 21. "Formation of Guardians Committees Areas."

of them (such as those which relate to public health or education) to the committees of county councils already charged with the administration of these services. The functions dealt with by a guardians committee are necessarily much fewer than those of a board of guardians; not only have many of the functions formerly possessed by the boards ceased to be "poor law" functions at all, but also many functions which still remain under the poor law are dealt with by the county public assistance committee, and never come within the sphere of the guardians committees at all. The Ministry gave as examples of this the control of staff and the management of institutions (*h*). In the opinion of the Ministry, it therefore followed that the meetings of guardians committees would be normally concerned with the consideration and examination of applications for relief and the making of the necessary orders. In the area of a union, there usually would not be enough work to occupy more than a part of the time of a committee; and the Ministry apprehended a danger lest some members of guardians committees would on that account lose interest in their work and cease to attend meetings regularly. This danger would not be present in larger areas (*i*). [611]

It is to be observed that where counties are of small area it would have been unnecessary, or even unwise, to divide them into several separate units. In such cases the public assistance committee of the county can best undertake the work usually assigned to guardians committees. To allow this, the Minister was given power by sect. 5 (7) of the Poor Law Act, 1930 (*k*), to exempt the council from the necessity of constituting guardians committees at all, and allowed to direct that the requirements of the section as to the creation of such committees need not apply to the county (*l*). [612]

A majority of the county councils followed the advice of the M. of H., and when the L.G.A., 1929, first became operative only fourteen out of sixty-two county schemes provided for the retention of the union areas as the basis of administration. In eight counties the Ministry approved schemes which took the whole county as the unit of administration. The new areas adopted for the guardians committee were often identical with the areas already created under the R. & V.A., 1925, for the county assessment committees. The reviews of county areas under sect. 46 of the L.G.A., 1929 (*m*), has since tended to widen the guardians committee areas and reduce the numbers of the guardians committees still further, and administrative schemes have had to be altered from time to time in order to bring the system of public assistance administration into line with the changes made by county reviews in the general system of local government administration (*n*). In some counties there has been a material reduction in the number of committees (*o*). [613]

Composition.—The composition of each guardians committee is determined by the administrative scheme, though limits as to size are imposed by sect. 5 (2) of the Poor Law Act, 1930 (*p*), these being a maximum of thirty-six and a minimum of twelve. The sub-section

(*h*) Memorandum L.G.A., 21, paras. 5—7. Recent developments have greatly weakened the force of the second example. See below, p. 275.

(*i*) *Ibid.*, para. 5.

(*k*) 12 Statutes 973.

(*l*) Memorandum L.G.A., 1, para. 14.

(*m*) 10 Statutes 916.

(*n*) M. of H. Annual Report, 1931–32, p. 195.

(*o*) M. of H. Annual Report, 1932–33, pp. 195–6.

(*p*) 12 Statutes 971.

requires the members to be drawn from the following classes of persons : (a) Members for the time being of the councils of the non-county boroughs and districts comprised in the area of the guardians committee ; (b) Members for the time being of the county council, representing electoral divisions wholly or partly comprised in the area of the guardians committee ; and (c) Persons not being elected members of the county council. [614]

The county council must appoint a number of members of the last type to each guardians committee, up to a maximum of one-third of the total membership of the committee. The persons so appointed must include women as well as men, and the council must have regard to the desirability of including persons who were members of poor law authorities immediately before the new system of administration came into effect, and other persons of experience in dealing with the matters which are the concern of the guardians committees (g).

A difficult point has arisen on sect. 5 (2), some authorities considering that county aldermen are included in the head of persons who are not elected members of the county council. County aldermen are, of course, elected members of a county council, though elected by the council (r), not by the local government electors, but apparently the words "not being elected members of the county council" in sect. 5 (2) (c) of the Act of 1930 should be read as referring to those members of the council who do not represent electoral divisions (see para. (b)) and as merely excluding the members of the council who represent electoral divisions and were elected by the electors. In some instances any doubt has been met by the inclusion in the administrative scheme of a clause to the effect that this class of member of a guardians committee may include county aldermen, and the clause has been accepted by the M. of H. [615]

As sect. 5 (2) of the Poor Law Act, 1930, prescribes that a number of members of guardians committees are to be appointed from among the members for the time being of the councils of boroughs or districts comprised in the guardians committee area, the scheme must provide, first, for the determination of the number of these members which each guardians committee is to contain, and, secondly, for the method of their appointment. The model scheme of the M. of H., which most schemes follow more or less closely in this respect, provides for the nomination by the council of each non-county borough and district of a member or members to serve on each guardians committee, any such member to hold office for a period of three years, unless before the end of this period he ceases to be a member of the nominating council (a). [616]

The schemes must also determine the number of county councillors to be appointed to each committee, and the manner in which they are to be nominated by the county council. The period of office for a councillor as a member of a guardians committee is usually three years, unless, as before, he ceases to be a member of the nominating council before the expiration of this period. The period of office of persons other than councillors who are appointed to serve on a guardians committee is also usually three years. In some instances, however, the period of office of all members of a guardians committee is reduced to one year by an administrative scheme. The scheme makes provision for the filling of casual vacancies, for the resignation of members,

(g) Poor Law Act, 1930, s. 5 (2), (4) ; 12 Statutes 971—2.

(r) See ss. 6, 7 of L.G.A., 1933 ; 26 Statutes 308, 309.

(a) Model Scheme, Clause 8.

and for the validation of any proceedings in the event of vacancies in membership or defects in appointment arising. [617]

Disqualification of Members.—By virtue of sect. 94 of L.G.A., 1933 (b), the disqualifications which apply to membership of a local authority apply also to membership of a guardians committee (c). Appointment to a paid office under the direction of a guardians committee renders a person ineligible for election as a member of any local authority which is empowered by the administrative scheme to nominate one or more members for appointment to the committee (d). [617A]

Interest in Contracts.—The provisions of the L.G.A., 1933, regarding contracts between a local authority and its members are also made applicable to guardians committees (e). The members of a guardians committee should therefore give notice to the clerk of the county council of any contracts in which they have an interest. Their right as members of the committee to inspect the book in which such notices are recorded is limited to a right to inspect the entries relating to the members of the committee on which they serve (sect. 95). [618]

Consultation with Public Assistance Committee.—An administrative scheme must lay down the methods by which consultation between the public assistance committee and the guardians committees is to be brought about. Here again a scheme usually follows the model scheme of the M. of H. This provides (following sect. 5 (5) of the Poor Law Act, 1930) that each guardians committee may nominate their chairman, or another member of the committee, to be present at any meeting of the public assistance committee at which business specially relating to the area of the guardians committee in question will arise. The committee must send the name and address of the person so nominated to the public assistance committee, who, on the other hand, must give the guardians committee adequate notice (f) of the date and time of any meeting at which such business is likely to arise. Information as to the nature of the business must also be supplied. A deputy nominated by the guardians committee may take the place of the person appointed to attend, if he is unable to be present. Any person so nominated to represent a guardians committee at a meeting of a public assistance committee may take part in the proceedings of the latter committee, so far as they relate specially to the area of the committee by which he is appointed, but he may not vote (g). [619]

Place of Meeting.—The scheme must specify the places of meeting of the various guardians committees. The model scheme of the Ministry provides that the meeting-place of each committee shall be that mentioned in the schedule to the scheme, though the committee may meet elsewhere, if the public assistance committee so decide in any particular case. This provision can be improved on by making the scheme determine merely the *principal* meeting place of each guardians committee, with liberty to the committee to vary it if they so desire, subject to the approval of the public assistance committee. Any local authority (including a local authority not concerned with the relief of the poor) must allow a guardians committee or sub-committee to use,

(b) 26 Statutes 356.

(c) For these, see title COUNTY COUNCILLOR.

(d) L.G.A., 1933, s. 59 (2); 26 Statutes 336.

(e) *Ibid.*, ss. 76, 95; 26 Statutes, 346, 357.

(f) Sometimes five and sometimes ten days' notice is specified in the schemes which have been adopted.

(g) Poor Law Act, 1930, s. 5 (5); 12 Statutes 972.

free of charge, for meetings any premises belonging to the authority, at any time when they are not required for their own use (*h*). This would not appear to exempt the county council from liability to repay expenses specially incurred in warming, lighting or cleaning the room in which the meetings of the committee or sub-committee are held, as it may be said that the enactment merely requires the premises, as they stand, to be used free of charge for meetings. Against this view, it may be argued that other enactments allowing the free use of rooms for meetings have expressly provided for the repayment of extra expenses incurred through such use (*i*). [620]

Delegation to Guardians Committees.—Sect. 5 (3) of the Poor Law Act, 1930 (*j*), provides that every guardians committee shall discharge, in accordance with the provisions of the administrative scheme, the functions of the council under the Act relating to :

- (1) the consideration and examination of applications for relief ;
- (2) the determination of the nature and amount of the relief so given ;
- (3) the determination of the amount to be repaid to the council by the person receiving the relief, or by the persons responsible for his maintenance (*k*) ; and
- (4) the visiting, inspection, or management of any public assistance institution in the area of the guardians committee, on the request of the public assistance committee.

In administering these functions the guardians committee must observe such general or special restrictions or conditions as the county council may from time to time impose. The delegated functions cannot include the appointment or dismissal of any officer. [621]

Schemes usually provide for a certain measure of control exercisable by the public assistance committee over guardians committees in the discharge of their functions. The model scheme requires the guardians committees to report to the public assistance committee the case of any person, to whom relief has been granted, appearing to be neither settled in, nor irremovable from, the county. The guardians committee must also advise the public assistance committee regarding proceedings for the recovery of money due under maintenance orders, or in connection with the repayment of relief on loan, or in other ways. Matters may be specially referred to the guardians committee in order that their advice may be obtained when difficulties arise. Other provisions in the model scheme require the guardians committee to submit reports of their proceedings from time to time to the public assistance committee, and to furnish them with such returns and other information as they may require (*l*). One or two departures from the model scheme, dealing with the delegation of functions, are to be found in schemes now operative. Those which are most worthy of mention deal, first, with the strengthening of the clause in the model scheme which subjects guardians com-

(*h*) Poor Law Act, 1930, s. 5 (6) ; 12 Statutes 972.

(*i*) See e.g. s. 4 (2) of L.G.A., 1894 (10 Statutes 777), s. 69 (2) of L.G.A., 1933, and para. 4 (2) of Part III. of the Second Schedule to that Act (26 Statutes 343, 480). The words " free of charge " do not occur in s. 59 (3) of L.G.A., 1894 (10 Statutes 815).

(*j*) 12 Statutes 972.

(*k*) See s. 16 of L.G.A., 1929 ; 10 Statutes 893. Maintenance orders may also be obtained from the justices under s. 19 of the Poor Law Act, 1930, against a husband or a relative mentioned in s. 14 of that Act ; see 12 Statutes 976, 979.

(*l*) Model Scheme, clause 9.

mittees, in the discharge of their functions, to such general or special restrictions as the county council may from time to time impose; the amendment makes them subject also to the public assistance committee in the same way. The position of that committee may also be strengthened by the insertion in the scheme of a requirement that all guardians committees shall submit accounts to the public assistance committee of relief granted otherwise than in cash, and another provision may require the guardians committee to prepare and submit to the public assistance committee estimates of, and reports on, their income and expenditure, including that of their sub-committees. This is, however, somewhat unusual. In the first place, a guardians committee cannot be said at law to have any income or expenditure as such; all income is the income of the county council, and all expenditure is that of the same body. From the angle of administrative practice there is, again, a growing tendency for all accounts to be kept by the financial officer of the county, and for guardians committees to keep no accounts at all. [622]

Meetings and Procedure.—The meeting places of guardians committees are fixed by the scheme, and in the model scheme fortnightly meetings were suggested. Operative schemes more often establish a minimum of one meeting a month, and this is becoming the usual rule. A quorum of one-third was also suggested in the model, but here again operative schemes have tended to differ, the lower figure of a quarter being sometimes adopted, or an arbitrary number laid down, the fact that the number of members of the different guardians committees may widely vary being disregarded. As to standing orders, the model scheme provides that those adopted by the council, regulating the meetings of committees and sub-committees, shall apply to the meetings of guardians committees. This provision is sometimes omitted altogether. Finally, the model scheme provides that the public assistance committee may authorise guardians committees to appoint such sub-committees as they may deem desirable for the discharge of their functions, and give directions as to the quorum, proceedings, and place of meeting of each sub-committee, with the sole restriction that the quorum shall in no case be less than three. This clause is sometimes strengthened in operative schemes in favour of the public assistance committee, empowering this committee to require the appointment by guardians committees of such sub-committees as they consider necessary for the efficient discharge of the functions of the guardians committees in connection with applications for relief in the various areas (*m*). [623]

Admission of Press.—There is no obligation on guardians committees to admit the press to their meetings. A guardians committee is not a "local authority" within the meaning of the Local Authorities (Admission of the Press to Meetings) Act, 1908 (*n*). The status of the committee is merely that of a sub-committee of a committee of the county council, and it is, therefore, not within the discretion of the committee to decide whether or not the press shall be admitted. This question is one for determination by the county council. [624]

Travelling Expenses.—Sect. 294 of the L.G.A., 1933 (*o*), allows a county council to defray any of the expenses necessarily incurred by the members of any committee in travelling to and from meetings, or in travelling by direction of the committee for the purpose of carrying out an inspection necessary for the discharge of the functions of the

(*m*) Model Scheme, clauses 10 and 12.

(*n*) 10 Statutes 844.

(*o*) 26 Statutes 462.

committee. This section only applies to a committee or sub-committee appointed for the discharge of functions throughout the area over which the county council exercise them. It follows that the ordinary travelling expenses of a member of a guardians committee cannot be paid by the council, as the functions of the committee are limited to a part of the county. Payment of these expenses has on a number of occasions been disallowed by the district auditors. Some difficult cases may nevertheless arise, *e.g.* a member of a guardians committee may undertake to visit an institution outside the area of his committee, and request the payment of his expenses by the council. It may then be impossible to regard the visit as an ordinary duty of the committee, as it comes more naturally within the category of "county business." The view of the M. of H. is that the reasonable travelling expenses incurred in connection with such visits may be paid by the county council (*p*). The term "travelling expenses" should be read literally, and cannot (in the opinion of the Minister) be extended to include a subsistence allowance. The question whether or not a particular visit is or is not part of the ordinary duties of a member of a guardians committee should be determined by the county council. A borough or district council are not empowered to pay the expenses of one of their members who serves on a guardians committee. The M. of H. has received many representations on the subject of travelling expenses, but no action has yet been taken in the matter. The problem is a difficult one which requires legislation before a satisfactory solution can be reached. [625]

Grant of Relief by Guardians Committees.—The principal function of guardians committees is to grant relief to necessitous persons. As at first conceived, the new system of poor law administration endowed them with this function only, reserving all other poor law functions for direct administration by the public assistance committee and their sub-committees. Even if the original conception of the functions of the guardians committee had proved correct, the status of the committee as an administrative body would have been by no means low, for, as has been remarked in an M. of H. memorandum, the consideration and examination of applications for relief, and the making of the necessary orders, is perhaps the most interesting and characteristic part of poor law administration (*q*). In the administration of relief, guardians committees are bound by the regulations contained in the Public Assistance Order, 1930, and the Relief Regulation Order, 1930 (*r*), and by such restrictions and conditions as may have been imposed by the county council pursuant to sect. 5 (3) of the Poor Law Act, 1930. In their assessment of the amount of relief to be granted, they usually follow the scales or regulations of the public assistance committee. [626]

Method of Granting Relief.—The grant of relief by guardians committees is usually referred by them to district relief sub-committees. Applications for relief are dealt with by a relieving officer, who investigates the circumstances of the applicant, and makes a report to the sub-committee (*s*). The applicant must if necessary appear before the

(*p*) "Local Government, 1931," pp. 636—7.

(*q*) Memorandum L.G.A., 21, para. 5.

(*r*) S.R. & O., 1930, Nos. 185, 186; 12 Statutes 1053, 1090. S. 6 of the Public Assistance Order extends the application of the word "council" to include, in relation to any function, any committee or sub-committee having the duty of discharging it. S. 8 makes the order applicable to every such council. S. 2 of the Relief Regulation Order applies this definition of "council" to that order.

(*s*) See titles RELIEVING OFFICER, CASE PAPER SYSTEM, and s. 167 of the Public Assistance Order, 1930; 12 Statutes 1079.

sub-committee; this is desirable on a first application. When relief extends over a long period it is especially desirable in the interests of good administration to make arrangements for applicants to be brought before the sub-committee at frequent intervals, though this often is not practicable in the case of the aged and the infirm, and in rural areas is not possible on account of the distance to be travelled. The sub-committee must decide whether or not relief is to be granted; if it is, then they must also fix the amount and the form the relief should take. They must also decide whether the relief is to be on loan, though they are bound in some instances in this respect by the regulations of the public assistance committee and subject to sect. 49 of the Poor Law Act, 1930, and the Relief Regulation Order, 1930. Cases must be reviewed and determinations as to the amount of relief revised from time to time in accordance with sect. 11 of the Relief Regulation Order, 1930, as amended by the amending order of 1932 (*t*). Applications for medical relief must also be dealt with, and may be granted either on the recommendation of a relieving officer or on direct application to the district medical officer. [627]

The model scheme reserves two functions relating to the grant of relief to the public assistance committee: (1) The payment of relief in money after it has been granted by the guardians committee; and (2) The supply of relief in kind ordered by the guardians committee, either from the council's own stores, or by means of orders on tradesmen or otherwise. [628]

Many county public assistance committees, with the object of obtaining greater uniformity in the administration of relief, have prescribed scales for the guidance of their guardians committees, but these committees are usually allowed the utmost latitude in the application of the scale, provided that the maximum so prescribed is not exceeded. The consent of the public assistance committee is only required to a grant of relief in excess of the maximum. [629]

In some counties, each guardians committee appoint a central relief sub-committee, to whom the task is entrusted of securing a measure of uniformity between the various district relief sub-committees. This is their principal duty, but they have other functions to perform, such as: (1) the final decision of all cases involving difficult or unusual features; (2) the revision of cases (if not already dealt with by the district relief committees); (3) the decision whether or not legal proceedings should be taken for false statements or neglect to maintain; and (4) the consideration of the ability of liable relatives to contribute, if the volume of the work is too great to allow the district relief committees to undertake this duty.

In the majority of counties, however, this practice is not followed, though it would appear that the efficiency of the administrative system is improved by it. When a central relief sub-committee is not appointed, these matters are usually dealt with by the guardians committee. [630]

Uniformity of Administration.—One of the principal objects of the reform of the poor law system was to secure a greater degree of uniformity between the administration of poor relief in the various areas (*u*). Even within the boundary of a county the procedure of the several boards of guardians differed, and in some cases widely. These

(*t*) 12 Statutes 1092; 25 Statutes 461.

(*u*) See M. of H. Memorandum L.G.A., 35, para. 5.

variations were in part due to variations in policy. The new public assistance committees were therefore recommended by the M. of H. to take such action by way of instructions to the guardians committees as would lead to the establishment of greater uniformity. Councils were, however, advised to act cautiously in the matter, as it was felt that the general and immediate imposition of a uniform scale of relief, and other restrictions, might lead to difficulties which could be avoided by more deliberate action. In the opinion of the Ministry it was desirable that, except in so far as any excesses or defects in administration, regarded by the council as substantial, were found to occur, the freedom of action and the sense of responsibility of the guardians committees should be maintained. Even where the areas of two unions with different traditions came under one guardians committee, the Ministry considered it desirable that the traditions of the several areas should be carefully considered. [631]

County public assistance committees have therefore had to make special arrangements for securing uniformity between the various guardians committees in their areas. Besides the measures leading in this direction that have already been described, such as the fixing of a county scale of relief, and the co-ordination of the work of the various district relief sub-committees by central relief committees, some county councils have appointed special sub-committees of the public assistance committee to review decisions arrived at by the guardians committees. The work of this sub-committee is sometimes exceedingly heavy—one case has recently been reported of a special sub-committee which had to meet for two full days in nearly every week throughout the year, dealing in that period with some 10,500 recipients of out-door relief submitted for review or revision. [632]

Another method of securing uniformity is by the introduction of a system of special investigation and cross-visitation by officers directly employed for this purpose by the public assistance committee. The information obtained in this way is transmitted to the guardians committee concerned for such action as may be necessary. In consequence, relief may be discontinued, reduced, or increased where grants of relief are discovered which are not in accordance with the general practice of the county. [633]

Although the attempt to secure uniformity has now been actively prosecuted for some years, wide inequalities still exist between the scales of relief granted by different guardians committees in the same county. This state of affairs is likely to continue. In part it is attributable to divergencies in the political views of urban and rural communities, and to differing views entertained by guardians committees as to what constitutes adequate relief. The enforcement of restrictions by the public assistance committee is likely to lead to widespread resentment. Even if the public assistance committee can secure the reduction of the amount of an order for relief which appears excessive, it may be impossible in practice to compel a guardians committee to increase another order which seems inadequate. [634]

Management of Institutions.—Sect. 5 (3) (d) of the Poor Law Act, 1930 (a), requires that a guardians committee shall, in accordance with the administrative scheme, discharge the functions of the county council relating to the visiting, inspection or management of any public assistance institution in their area. But this is only to apply if the

public assistance committee so requests. There is therefore no obligation on the part of the council to give the guardians committee any function at all in this matter; and visitation, inspection or management can either be reserved to some other committee, such as the public health committee, or delegated absolutely to the public assistance committee. Despite its form, the enactment is merely an enabling one. But the opinion of the M. of H. at the time of the passing of the L.G.A., 1929, was that a county council would elect in most cases to exercise the discretion thus given to it to reserve in the hands of the public assistance committee the management of poor law institutions, in order that a due measure of co-ordination might be ensured in the council's policy of improving and classifying institutional accommodation throughout the county. In fact, however, the expectations of the Ministry have only been realised in about one-half of the counties; and in the remainder the management of the poor law institutions was handed over to the guardians committees (*b*). [635]

Boarding Out of Children.—The duty of boarding out orphan or deserted children, or children over whom the county council have assumed parental control under sect. 52 of the Poor Law Act, 1930 (*c*), is often delegated to guardians committees, or sub-committees of those bodies (*d*). In other counties the duties are performed by the public assistance committee centrally, or special boarding-out committees are appointed. The M. of H. point out that wide variations exist between the practice of one county and another, and that there is room for considerable improvement in many counties in this respect (*e*). In some areas the county education committee have been made responsible for the boarding out of children instead of the guardians committees. [636]

Where a guardians committee act as a boarding-out committee they must find suitable homes for children to be boarded out in their area, and exercise regular supervision over any such children under their charge (*f*). A woman officer may (or must, if required by the M. of H.) be appointed to visit children boarded out (*g*). Subject to any regulations made by the county council or the public assistance committee, the visitor must act under the direction of the committee responsible for boarding out. If a visitor is not appointed arrangements must be made under sect. 114 of the order for a woman member of the committee to visit, at least every six weeks, each child boarded out. [637]

Staff.—A complete skeleton staff of a guardians committee frequently consists of a clerk of the committee (*h*), together with other officers, usually a minute clerk, a case-paper clerk (unless the case-papers are kept by the relieving officers) and a junior clerk. In addition there will be a staff of relieving officers and collectors, the number being governed by the amount of work to be done. In the smaller areas this organisation will suffice, but when large amounts of work are dealt with additional officers must be employed. It is, however, hard to be

(*b*) M. of H. Annual Report, 1933–34, p. 63.

(*c*) 12 Statutes 994.

(*d*) The names of some twenty counties in which this plan has been adopted are given on p. 204 of the M. of H. Annual Report, 1930–31.

(*e*) M. of H. Annual Report, 1933–34, p. 241.

(*f*) Public Assistance Order, 1930, s. 100; 12 Statutes 1070.

(*g*) *Ibid.*, s. 104; 12 Statutes 1070.

(*h*) The chief officer of a guardians committee may also bear the title "local public assistance officer," "assistant public assistance officer," or "area clerk."

definite as to the composition of the staff employed under the direction of guardians committees, or the duties of the various officers concerned, as local practice varies considerably.

Many boards of guardians only appointed part-time clerks, and in some counties this arrangement was continued, the part-time clerks of the guardians becoming the part-time clerks of the guardians committees (*i*). A tendency has, however, arisen to centralise staffing arrangements, some of those counties which had inherited part-time clerks deciding later to supply the committees with all the clerical help they needed from the staff of clerks employed at headquarters (*k*). Some counties have only made temporary appointments of clerks of guardians committees, in order that a comprehensive readjustment may be made after the effects of the county review have been fully considered.

[638]

It will be remembered that a county council are expressly forbidden by sect. 5 (3) of the Poor Law Act, 1930 (*l*), to delegate to a guardians committee the function of appointing and dismissing any officer. The M. of H. considered that the appointment and control of staff would be dealt with exclusively by the public assistance committee, when the new system of administration came into operation (*m*), but pressure of work (particularly in connection with the assessment of transitional payments) has in some counties compelled the public assistance committee to rely mainly on the recommendations received from the guardians committees when any matters affecting individual officers come up for discussion. But this is again a matter in which practice varies considerably. The provision in sect. 5 (3) appears to most authorities to be sound, and it is generally held that it should be strictly applied. In the majority of counties, appointments are made by a sub-committee of the public assistance committee, though usually the views of the appropriate guardians committee are ascertained before a decision is arrived at. In one case at least the chairman of the guardians committee is allowed to be present (without the power of voting) when appointments affecting his committee are under consideration. In a few counties, however, salaries and appointments are first dealt with by a staff sub-committee of the guardians committee, who send on their recommendations to the public assistance committee.

[639]

Recent Developments.—An entire reorganisation of the system of granting public assistance in London took place in the Spring of 1935, as to which see the title PUBLIC ASSISTANCE IN LONDON. In the county of Middlesex, also, extensive changes have occurred. There the administrative scheme under the L.G.A., 1929, created guardians committees of the normal type, each consisting of eighteen members nominated by the borough and district councils, twelve co-opted members and six members of the county council. Members of the county council were thus in a marked minority. By sect. 151 of the Middlesex County Council Act, 1934 (*n*), sect. 4 (2)—(4) and sect. 5 of the Poor Law Act, 1930 (*o*), were repealed as respects Middlesex, and in substitution sect. 122 of that Act (*p*), relating to committees and sub-

(*i*) M. of H. Annual Report, 1929–30, p. 182.

(*k*) M. of H. Annual Report, 1931–32, p. 195.

(*l*) 12 Statutes 972.

(*m*) Memorandum L.G.A., 21, para. 5.

(*n*) 24 & 25 Geo. 5, c. lxxxix. (local).

(*p*) *Ibid.*, 1032.

(*o*) 12 Statutes 971.

committees of the L.C.C., was extended to Middlesex, subject to a modification of sub-sect. (2) (a) by a requirement that a majority of members of a sub-committee of the public assistance committee should be members of the county council or of a local authority. The way was thus cleared for the abolition of the guardians committees, and their replacement, by means of a new scheme approved by the Minister on March 13, 1935, of sub-committees for poor law functions resembling those created by the L.C.C. Adjudicating officers were also appointed in Middlesex. By this scheme, the poor law functions of the county council (except certain reserved functions) are referred to various committees, and the public health committee act as the public assistance committee, so long as the first-mentioned committee consist of the chairman and vice-chairman of the council and of not less than eighteen nor more than thirty-six members of the council. Sub-committees may be appointed and a relief sub-committee must be appointed, and a sub-committee may include members of the county council who are not members of the public assistance committee, so long as a majority are members of the public assistance committee. [640]

As respects county boroughs, as guardians committees are not there appointed, but by sect. 6 of the Poor Law Act, 1930 (*q*), are replaced by sub-committees of the public assistance committee (as in London), it may be possible for a county borough council to follow the new system adopted in London and Middlesex, without the necessity of amending legislation as a preliminary, if the approval of the M. of H. to a fresh scheme and to the appointment of adjudicating officers, can be secured. [641]

In the depressed industrial areas other difficulties have arisen. An investigator appointed by the Government to examine the conditions in the county of Durham reported in 1934 that grave difficulties had arisen in that county, particularly as the result of the widespread distress and the consequent impossibility of finding a sufficient number of disinterested people to serve on the district relief sub-committees. In that county, the Government were compelled to appoint commissioners to assess transitional payments. The considerations that led to this step point also in the direction of the entire removal of the administration of outdoor relief from the control of the local authority (*r*). [642]

(*q*) 12 Statutes 973.

(*r*) "Report of Investigators into Industrial Conditions in certain Depressed Areas," 1934, Cmd. 4728.

GUILDHALL

See OFFICIAL BUILDINGS.

GUN LICENCES

See LOCAL TAXATION LICENCES.

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GYMNASIA

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See also titles : APPROPRIATION OF LAND ;
BORROWING ;
LIBRARIES.

For gymnasia in public baths, see title BATHS AND WASHHOUSES.

For gymnastic apparatus in public parks, see title GAMES, PROVISION FOR.

Introduction.—Originally the Museums and Gymnasiums Act, 1891 (*a*), could be adopted either wholly or so far as it relates to gymnasiums only by the council of any borough or urban district (*b*). But sect. 11 of the Public Libraries Act, 1892 (*c*), also authorised a public library authority to provide museums, and as a matter of policy it was decided by the Government that any future museum should be provided by a council under that enactment, not under the Museums and Gymnasiums Act, 1891. Effect to this policy was given by sect. 9 of the Public Libraries Act, 1919 (*d*), but any museum established before December 23, 1919, could continue to be maintained under the Act of 1891, although it had to be transferred to the public library authority, if the area formed or became part of a library district; see proviso to sect. 9. [643]

Adoption of Act.—It follows that any future adoption of the Act of 1891 should be restricted to the Act, so far as it relates to gymnasia. The Act may be adopted by a resolution of the council, and one month

(*a*) 13 Statutes-846.

(*b*) Museums and Gymnasiums Act, 1891, s. 3 (1). Power to provide new museums under the Act was taken away by the Public Libraries Act, 1919, s. 9.

(*c*) 13 Statutes 854.

(*d*) *Ibid.*, 969.

at least before the meeting, special notice of it and of the intention to propose the resolution must be given to every member of the council in the mode in which notice to attend meetings of the council are usually given. The resolution passed must also be published by advertisement in one or more local newspapers, and notice of it affixed to the principal doors of every church and chapel in the area, in the place to which notices are usually fixed, or otherwise in such manner as the council think sufficient. A copy of the resolution must also be sent to the M. of H. and the Board of Education (*e*). The resolution of adoption comes into operation at such time, not less than one month after the first publication of the advertisement of the resolution, as the council may by resolution fix (*f*). The advertisement of the resolution is the most important step to take after the resolution has been passed, for the reason that no objection to the effect of the resolution on the ground that notice of the intention to propose the same was not duly given, or on the ground that the resolution was not sufficiently published, can be made after the expiration of three months after the date of the first advertisement (*g*). [644]

Provision of Gymnasia.—Having adopted the Act, the council may provide and maintain gymnasia with all the apparatus ordinarily used therewith, and may erect buildings, and generally do all things necessary for the provision and maintenance of such gymnasia (*h*). [645]

Land.—For the purpose of providing a gymnasium, the council may acquire land by agreement, whether by purchase, lease or exchange, either within or without their area, and, with the consent of “the appropriate Minister,” may do so although the land may not be immediately required for the purpose (*i*). The appropriate Minister appears in this instance to be the Board of Education, see L.G.A., 1933, sect. 153 (3) (*j*). The repealed sect. 11 of the Act of 1891 expressly provided that land should not be acquired compulsorily, and sect. 179 (*f*) of L.G.A., 1933 (*k*), precludes the exercise of a compulsory power of purchase under the Act of 1933.

The repealed sect. 11 of the Act of 1891 also gave a power of appropriating land for a gymnasium, but this is replaced by sect. 163 of L.G.A., 1933 (*l*). This section enables the council to appropriate, for the purpose of a gymnasium, land belonging to them which is not required for the purpose for which it was acquired or has since been appropriated, subject, however, to the approval of the M. of H., who may direct such adjustments in the accounts of the council as may be desirable in consequence of the appropriation. See, further, the title APPROPRIATION OF LAND in Vol. I. [646]

Restrictions on Closing.—When a gymnasium has been provided under the Act, it must be kept open to the public free of charge for two hours on at least five days a week, although it may be closed as a gymnasium for not more than twenty-four days in a year, nor for more than six consecutive days, and the use of the building during such

(*e*) See S.R. & O., 1920, No. 810, s. 3.

(*f*) Museums and Gymnasiums Act, 1891, s. 3 (3); 13 Statutes 846.

(*g*) *Ibid.*, s. 3 (5); 13 Statutes 847.

(*h*) *Ibid.*, s. 4.

(*i*) L.G.A., 1933, ss. 157, 158; 26 Statutes 391, 392. S. 11 of the Act of 1891 was repealed, except as to London, by L.G.A., 1933.

(*j*) 26 Statutes 392.

(*k*) *Ibid.*, 404.

(*l*) *Ibid.*, 396.

periods may be granted to any person, either free or for payment, for lectures, exhibitions, public meetings or entertainments or other public purpose, and the council may direct whether admission on such occasions is to be subject to payment or otherwise (*m*). The council may also close the gymnasium for repairs, after giving a fortnight's notice of their intention so to do, by fixing a notice on the door of the building, or otherwise as they think fit (*n*).

Subject to sect. 6 (1) of the Museums and Gymnasiums Act, 1891, the council may regulate the admission of the public to the gymnasium, by classes or otherwise, and may charge for such admission; they may also grant exclusive use of the premises, for not more than two hours a day, to any person or body for the purpose of gymnastics for such payment and on such terms and conditions as they may think fit (*o*).
[647]

Regulations and Bye-Laws.—Under sect. 7 of the Act (*p*), the council may make regulations for fixing the times at which a gymnasium shall be open free to the public; for regulating the use of a gymnasium by classes or otherwise, and fixing fees for such use; for determining the duties of the instructors, officers and servants in connection with the gymnasium; and generally for regulating and managing the gymnasium. They may also make bye-laws for regulating the conduct of persons admitted to the gymnasium, and for the removal of any person who infringes such bye-laws, either by an officer of the council or by a constable.

The regulations require no confirmation or approval of a central authority. On the other hand, the provisions with respect to bye-laws contained in sects. 182 to 186 of the P.H.A., 1875 (*q*), were applied to bye-laws made under the Act of 1891 (*r*), and therefore, by virtue of sect. 250 (1) of the L.G.A., 1933 (*s*), the provisions of that section must be complied with. The confirming authority to whom application for confirmation of the bye-laws is to be made is the Board of Education (*t*).

In addition to the general powers of councils of boroughs and urban districts to appoint officers for the efficient discharge of their functions (*u*), those councils may employ and pay instructors in connection with a gymnasium (*a*). [648]

Discontinuance.—If it appears to the council that a gymnasium which has been established for seven years or upwards is unnecessary or too expensive, it may, with the consent of the Board of Education, be sold for the best price that can reasonably be obtained (*b*). The proceeds of sale are to be applied towards the repayment of money borrowed for the purpose of the gymnasium, and, so far as not required for such repayment, are to be applied to any purpose to which the capital moneys are properly applicable, subject to the approval of the Board of Education (*b*). [649]

(*m*) Act of 1891, s. 6 (1), (3); 13 Statutes 847, 848.

(*n*) *Ibid.*, s. 8.

(*o*) *Ibid.*, s. 6 (2); 13 Statutes 847.

(*p*) 13 Statutes 848.

(*q*) *Ibid.*, 704—706.

(*r*) See Act of 1891, s. 7 (2).

(*s*) 26 Statutes 440.

(*t*) L.G.A., 1933, s. 250 (10); M. of H. (Public Libraries, Museums and Gymnasiums, Transfer of Powers) Order, 1920, S.R. & O., 1920, No. 810.

(*u*) L.G.A., 1933, ss. 106, 107; 26 Statutes 361, 362.

(*a*) Act of 1891, s. 9 (13 Statutes 849), partly repealed outside London by L.G.A., 1933.

(*b*) Act of 1891, s. 12; Order of 1920, cited *supra*.

Financial Provisions.—The fees and sums received in respect of a gymnasium are to be applied in defraying the expenses of it (*c*); in so far as these moneys are insufficient for the purpose, the expenses are a charge on the general rate fund (*d*). The amount to be expended under the Act of 1891 by a council in any one year must not exceed the produce of a halfpenny rate (*e*). A council may borrow money for the purposes of the Act of 1891 (*f*). The provisions of Part IX. of the L.G.A., 1933, apply to such borrowings, and the consent of the M. of H. is necessary. Loans may be advanced by the Public Works Loan Commissioners for these purposes (*f*). The accounts of each gymnasium established under the Act must apparently be kept separate (*g*), although it may be intended that separate accounts should be kept only with respect to (1) museums, and (2) gymnasia. [650]

London.—By sect. 13 of the Public Libraries Act, 1901 (*h*), the Museums and Gymnasiums Act, 1891, was extended to London, and in future may be adopted as to gymnasia (see *ante*, p. 279) by a metropolitan borough council or by the common council of the City of London. Expenses are to be defrayed in the same manner as expenses under the Public Libraries Act, 1892, *i.e.* under sect. 21 of that Act in the City out of the general rate, which was substituted for the consolidated rate by sect. 15 of the City of London (Union of Parishes) Act, 1907 (*i*), and under sect. 18 (*c*) of the Act of 1892 out of the general rate levied under sect. 10 of the London Government Act, 1899 (*k*). [651]

(*c*) Act of 1891, s. 10 (1); 13 Statutes 849.

(*d*) L.G.A., 1933, ss. 185, 188; 26 Statutes 407, 408.

(*e*) Act of 1891, s. 10 (5).

(*f*) *Ibid.*, s. 10 (3). In part repealed by L.G.A., 1933.

(*g*) *Ibid.*, s. 10 (4).

(*i*) 14 Statutes 605.

(*h*) 13 Statutes 892.

(*k*) 11 Statutes 1231.

HACKNEY CARRIAGES AND OMNIBUSES

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See also titles :

BYE-LAWS ;
CABMEN'S SHELTERS ;
HORSES, PONIES, MULES AND ASSES ;
LONDON ROADS AND TRAFFIC ;

MOTOR LICENCES ;
OMNIBUSES OF LOCAL AUTHORITIES ;
ROAD TRAFFIC.

Introduction.—In general, hackney carriages are subject to the regulations contained in the Highway and other Acts, as well as the common law relating to carriages. Many changes have been made in regard to motor vehicles during the last few years, and the title ROAD

TRAFFIC must be referred to. Outside London, hackney carriages were dealt with in sects. 37—68 of the Town Police Clauses Act, 1847 (*a*). Originally this Act was not of general application, but was in force in those towns and districts to which it had been applied by a local Act. But by sect. 171 of P.H.A., 1875 (*b*), the provisions of the Act of 1847 with respect to hackney carriages were put in force in all boroughs and urban districts (*c*). [652]

Definitions.—By sect. 38 of the Act of 1847 every wheeled carriage, whatever its form or construction, used in standing or plying for hire in any street within a borough or urban district (*d*), and every carriage standing upon any street within any such area which has the number plate required by the Act or any special Act to be fixed upon a hackney carriage, or any plate resembling it, is to be deemed a hackney carriage. It was provided, however, that no stage coach was to be deemed to be a hackney carriage, and this excluded omnibuses and other such vehicles, until the Town Police Clauses Act, 1889 (*e*), was passed. Under sects. 3 and 4 of this Act every omnibus, char-a-banc, wagonette, brake and stage coach was to be included as a hackney carriage, where the word was used in sects. 37, 40—52, 54, 58 and 60—67 of the Act of 1847 (*f*), and brought under the law as to hackney carriages. By sect. 2 of the Metropolitan Public Carriage Act, 1869 (*g*), the limits of that Act were fixed as the metropolitan police district and the City of London, and the law as regards hackney carriages in the whole of that area is therefore dealt with under the title LONDON ROADS AND TRAFFIC. By sect. 1 (1) (*b*) of the Locomotives on Highways Act, 1896 (*h*), a light locomotive was to be deemed a carriage within the meaning of any Act of Parliament, and the effect of this was to bring motor cars within the law as to hackney carriages if used as such (*i*). By sect. 122 of the Road Traffic Act, 1930 (*k*), the provisions of the Town Police Clauses Act, 1847, with respect to hackney carriages and the whole of the Town Police Clauses Act, 1889, so far as they relate to public service vehicles, were repealed. "Public service vehicles" are defined in sect. 121 of the same Act as motor vehicles used for carrying passengers for hire or reward, other than a vehicle which is a contract carriage adapted to carry less than eight passengers or a tramcar or a trolley vehicle. "Contract carriage" is defined in sect. 61 (1) (*c*) of the Act (*l*) as a motor vehicle carrying passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole, at or for a fixed or agreed rate or sum. This leaves, therefore, as motor

(*a*) 19 Statutes 43—53.

(*b*) 13 Statutes 696.

(*c*) As to rural districts, see *post*, p. 284.

(*d*) See definition of "within the prescribed distance" in s. 171 of P.H.A., 1875.

(*e*) 19 Statutes 62.

(*f*) See *Blackpool and Fleetwood Tramroad Co. v. Bailey*, [1920] 1 K. B. 380; 42 Digest 853, 75; and *Yorkshire (Woollen District) Electric Tramways, Ltd. v. Ellis*, [1905] 1 K. B. 396; 42 Digest 853, 74, where it was held that carriages used on a light railway constructed and worked under the Light Railways Act, 1896, were not "omnibuses" or "hackney carriages" within the meaning of the Town Police Clauses Acts, 1847 and 1889.

(*g*) 19 Statutes 164.

(*h*) *Ibid.*, 64. Repealed by the Road Traffic Act, 1930.

(*i*) *Dennis v. Miles*, [1924] 2 K. B. 399; 42 Digest 858, 115.

(*k*) 23 Statutes 687.

(*l*) *Ibid.*, 655.

vehicles within the sections that apply to hackney carriages, taxis, motor cars hired by contract, small omnibuses, wagonettes, brakes or char-a-bancs carrying less than eight passengers, and trams. [653]

Various cases have been decided under the definitions in the Town Police Clauses Act, 1847 (*m*), and it is to be noticed that while under sect. 38 of the Act a carriage must stand or ply in a street to be a hackney carriage, and the definition of "street" in sect. 3 of the Act (*n*) does not cover private streets or yards or railway premises, a carriage need not under sect. 3 of the Act of 1889 be standing or plying in a street to constitute it an omnibus, and that omnibuses must be licensed wherever they are standing or plying for hire unless they are within the exceptions in the later part of sect. 3 of the Act of 1889 (*o*).

By sect. 76 of the P.H.A., 1925 (*p*), the provisions of the Act of 1847 and any bye-laws applicable to hackney carriages were extended to cover hackney carriages standing or plying for hire at railway stations or premises, though not to vehicles belonging to railway companies, and councils were prohibited from fixing the site of a stand on the property of a railway company without the consent of the company. [654]

Licensing Authorities.—By sect. 37 of the Town Police Clauses Act, 1847 (*q*), a power of licensing hackney carriages to ply "within the prescribed distance" was conferred on "the commissioners." When by sect. 171 of the P.H.A., 1875 (*r*), sects. 37—68 of the Act of 1847 were applied to all boroughs and urban districts, sect. 171 provided that "within the prescribed distance" should mean within any borough or urban district, and by sect. 316 (*s*) that the borough or district council should be "the commissioners."

By sect. 2 (2) of the Town Police Clauses Act, 1889 (*t*), that Act was also deemed to be incorporated with the P.H.A., 1875.

Rural district councils may obtain the powers of the Acts of 1847 or 1889 by an order of the M. of H. under sect. 276 of the P.H.A., 1875 (*u*), subject of course to the exclusion of public service vehicles propelled mechanically.

Sect. 171 of the Act of 1875 also provides that a licence to a driver of a hackney carriage is to be in force for one year only or until the next day appointed for the general licensing meeting of the council. But by sect. 5 of the Act of 1889 (*a*), licences may be granted for a less period than one year if the council think fit and indicate the limitation in the licence. Councils have a discretion in granting licences, but this must be exercised judicially (*b*). [655]

Licences.—Except for mechanically propelled vehicles (*c*) a fee not exceeding 5s. must be paid under sect. 39 of the Act of 1847 (*d*) for a hackney carriage licence, and under sect. 40 a requisition must be

(*m*) See 42 Digest 853—856.

(*n*) 13 Statutes 602.

(*o*) S. 3; 19 Statutes 62. See *Birmingham and Midland Omnibus Co. v. Thompson*, [1918] 2 K. B. 105; 42 Digest 853, 76, and *Crack v. Holt* (1927), 91 J. P. 36; 42 Digest 854, 82.

(*p*) 13 Statutes 1150.

(*r*) 13 Statutes 696. See also p. 288, *ante*.

(*t*) 19 Statutes 62.

(*a*) 19 Statutes 63.

(*b*) See *R. v. Brighton Corpn.* (1916), 85 L. J. (K. B.) 1552, and other cases at 42 Digest 856.

(*c*) See *post*, p. 288.

(*q*) 19 Statutes 43.

(*s*) *Ibid.*, 757.

(*u*) 13 Statutes 741.

(*d*) 19 Statutes 45.

signed by the proprietor of the carriage (*e*) who is liable for a penalty up to £10 for any mis-statement. The number of the licence is to correspond with a number painted or fixed on the carriage, and must be registered in a book kept by the council, which must be open to inspection without fee or reward (*f*). The proprietor must give notice of any change of address, subject to a penalty for not doing so, and is also subject to a penalty for plying for hire without a licence or while it is suspended, or if the number is not displayed on the carriage (*g*). A driver of a hackney carriage must also obtain a licence from the council, at a fee of 1s., and must be registered and must not act without having obtained a licence, or while it is suspended, and must not lend or part with it except to the proprietor of the carriage, and the proprietor must not employ any driver who is not so licensed (*h*). The proprietor is to keep the licence in his possession and to produce it if required before a justice on complaint. The proprietor must not, however, write any endorsement on the licence, which is the property of the driver (*i*), and he must return it to the driver when he leaves his service, except in cases of misconduct, when he must give his reasons for refusing before a justice if called upon (*k*). The council may, upon the conviction for the second time of the proprietor or driver for an offence under the Act or a bye-law, suspend or revoke the licence (*l*). [656]

Penalties are also recoverable if a driver of a hackney carriage allows an unauthorised person to act as a driver, for drunkenness or furious driving by a driver, and for leaving a carriage unattended in a place of public resort or for obstructing other drivers (*m*). The proprietor must pay compensation for damage done by the driver (*n*). If a complaint against a driver is not substantiated when made before a justice, the driver may be compensated (*o*). A penalty may be imposed if a passenger wilfully damages any hackney carriage (*p*). [657]

Omnibuses.—All the above provisions of the Act of 1847 as to hackney carriages were extended to omnibuses, as defined in sect. 3 of the Town Police Clauses Act, 1889, by sect. 4 (1) of that Act (*q*), but this Act was also repealed as to public service vehicles mechanically propelled, by the Road Traffic Act, 1930. Sect. 4 (2) of the Act of 1889 also extended the word “driver,” when used in the Act of 1847, to include every conductor of an omnibus. For the purposes of the Act of 1889, an “omnibus” is defined as including every omnibus, char-a-banc, wagonette, brake, stage coach and other carriage plying for hire or used to carry passengers at separate fares from or in any part of the borough or district. But the later part of sect. 3 excludes from the definition (1) carriages starting from and previously hired for particular

(*e*) 19 Statutes 45.

(*f*) Act of 1847, ss. 41, 42; 19 Statutes 45, 46. Such an entry is not conclusive evidence of ownership. See *Kemp v. Elisha*, [1918] 1 K. B. 228; 42 Digest 858, 111.

(*g*) *Ibid.*, ss. 44, 45; 19 Statutes 46.

(*h*) Ss. 46, 47; 19 Statutes 47. For requisitions and forms of both kinds of licences, see *Encyclopædia of Forms and Precedents*, 2nd ed., Vol. XII., pp. 528—531.

(*i*) *Norris v. Birch*, [1895] 1 Q. B. 639; 42 Digest 852, 73.

(*k*) Act of 1847, s. 49; 19 Statutes 48.

(*l*) *Ibid.*, s. 50.

(*m*) *Ibid.*, ss. 60—62, 64; 19 Statutes 51, 52.

(*n*) *Ibid.*, s. 63.

(*o*) *Ibid.*, s. 65.

(*p*) *Ibid.*, s. 67; 19 Statutes 53.

(*q*) 19 Statutes 62.

passengers at a livery stable yard, belonging to the occupier of the yard, and not standing or plying for hire within the borough or district; (2) omnibuses belonging to or hired or used by a railway company, and not so standing or plying; and (3) omnibuses starting outside the borough or urban district, bringing passengers within it, and not standing or plying for hire within it. [658]

The sections of the Act of 1847 that *are not applied* to omnibuses by sect. 4 (1), (3) of the Act of 1889 (*r*) are sect. 53, imposing a penalty on a driver for refusing to take a fare; sects. 55, 56 rendering illegal an agreement with the driver to pay more than the legal fare, or to carry passengers a discretionary distance for a fixed sum; sect. 57 which requires a deposit to be made when the driver is asked to wait; and sect. 59 which imposes a penalty for permitting extra persons to ride without the consent of the hirer. Sect. 68 of the Act of 1847, as to bye-laws, is replaced by sect. 6 of the Act of 1889 (*s*). The main differences between the two sections as to bye-laws are (1) that as regards omnibuses the fares are not fixed by the bye-laws, but the bye-laws may provide for the exhibition of a statement of the fares on some conspicuous part of the omnibus (*t*), and (2) that the bye-laws as to omnibuses may prohibit in the borough or district the owner, driver or conductor or any other person touting or importuning people to use the omnibus, to the annoyance of any person, or the blowing or playing upon horns or other musical instruments, or the ringing of bells by the driver or conductor or any person travelling on or using the omnibus. The use of head-lamps on omnibuses could also be required by bye-laws, but the lighting of all vehicles is now governed by the Road Transport Lighting Act, 1927 (*u*).

If a licence to ply for hire, applied for by the proprietor of an omnibus, which is not a public service vehicle and therefore still comes under the Act of 1889, is refused, or granted by the council subject to conditions, an appeal to the Minister of Transport lies under sect. 14 (3) of the Roads Act, 1920 (*a*), whose decision is final. See title APPEALS TO MINISTERS. [659]

Bye-Laws.—Bye-laws may be made by the council for the regulation of hackney carriages under sect. 68 of the Town Police Clauses Act, 1847 (*b*), and for such omnibuses as are still subject to the Act of 1889 under sect. 6 of that Act (*c*). The purposes for which bye-laws may be made are fully set out in each section, and it seems unnecessary to reproduce them. Bye-laws must be confirmed by the M. of H. under the P.H. (Confirmation of Bye-laws) Act, 1884 (*d*). As to points on which the two sections differ, see *supra*.

Some sections of the Act of 1847 impose a penalty for a contravention of the section, or for a breach of the bye-laws, *e.g.* on a driver who refuses or neglects to drive a passenger without reasonable excuse

(*r*) 19 Statutes 62.

(*s*) *Ibid.*, 63. For the model bye-laws under this section, see Mackenzie and Handford, 1899, Vol. II., pp. 87 *et seq.*

(*t*) See *R. v. Farnborough U.D.C.*, [1920] 1 K. B. 234; 42 Digest 857, 100.

(*u*) 19 Statutes 100.

(*a*) 19 Statutes 98. See *R. v. Bradford Corpn.* (1926), 135 L. T. 227; 42 Digest 856, 99, and *R. v. Minister of Transport*, [1927] 2 K. B. 401; 42 Digest 857, 101.

(*b*) 19 Statutes 53. Model bye-laws drawn up by the M. of H. may be purchased of H.M. Stationery Office, Kingsway, W.C.2.

(*c*) 19 Statutes 63.

(*d*) 13 Statutes 801.

to any place, or who demands more than the legal fare (*e*). A reasonable excuse would be that the person is suffering from an infectious disease, for by sect. 127 of the P.H.A., 1875 (*f*), no owner or driver is to be required to convey any person so suffering until he has been paid a sum sufficient to cover any loss or expense incurred in disinfecting his conveyance, which under the section he is bound to do, while by sect. 126 a person who exposes himself or a person who causes him to expose himself in a public conveyance while so suffering is also liable to a penalty. See also the other enactments as to infectious disease referred to on p. 419 of Vol. IV. [660]

Fares.—The fares for hackney carriages which are not public service vehicles mechanically propelled are fixed by bye-laws made under sect. 68 of the Act of 1847 (*g*), but as already pointed out (*h*), the fares for omnibuses of this kind are not fixed by bye-laws, but by the proprietor, and must not exceed the tariff exhibited in the omnibus. Penalties for charging less than the fare allowed by bye-law or for overcharging are imposed by sects. 54, 58 of the Act of 1847 (*i*), and on the refusal of a person to pay the fare allowed by bye-law, it may be recovered summarily as a civil debt (*k*) under sect. 66 of the Act (*l*). All these provisions are extended to omnibuses of the kind already described by sect. 4 (3) of the Act of 1889 (*m*) with the substitution of the fares exhibited on the omnibus for the fare allowed by bye-laws.

As respects hackney carriages which are not public service vehicles mechanically propelled, no agreement to pay more than the bye-law fare is binding, and any person paying more is entitled on complaint to a justice to recover the sum paid in excess, and the driver is liable to a fine (*n*). Nor can a proprietor or driver agree to carry passengers a discretionary distance for a fixed sum (*o*). If a driver is required to wait, he may demand before waiting a deposit of his fare from the starting point to the place where he waits, and for the period of waiting, but if he then goes away he is liable to a penalty (*p*).

A child may be an additional person for whom a charge may be made under bye-laws, but not an infant in arms (*q*). [661]

Revenue Duties.—A licence duty must be paid in respect of a hackney carriage under the Revenue Acts. As regards the duties on mechanically propelled vehicles, see also the title ROAD TRAFFIC.

By sect. 19 (5) of the Revenue Act, 1869 (*r*), a person licensed to keep or use a hackney carriage was exempted from the duty on male

(*e*) Act of 1847, ss. 53, 54; 19 Statutes 49. For the fare which may be charged if the journey be outside the prescribed area, see *Ely v. Godfrey* (1922), 86 J. P. 82; 42 Digest 859, 126.

(*f*) 13 Statutes 677.

(*g*) 19 Statutes 53.

(*h*) See *ante*, p. 286.

(*i*) 19 Statutes 49, 50.

(*k*) See *R. v. Kerswill*, [1895] 1 Q. B. 1; 42 Digest 859, 124.

(*l*) 19 Statutes 52.

(*m*) *Ibid.*, 62.

(*n*) Act of 1847, s. 55; 19 Statutes 49.

(*o*) *Ibid.*, s. 56.

(*p*) *Ibid.*, s. 57.

(*q*) See *Norton v. Jones* (1863), 2 New Rep. 25, and *Kemp v. Lubbock*, [1920] 1 K. B. 253; 42 Digest 860, 129, 130.

(*r*) 16 Statutes 248. See also *L.C.C. v. Allen*, [1913] 1 K. B. 9; 39 Digest 248, 313.

servants as respects any driver or servant employed in the care of a carriage or horses for it.

By sect. 4 of the Customs and Inland Revenue Act, 1888 (*s*), an excise duty of 15s. was imposed on a hackney carriage, which is defined in the section as any carriage standing or plying for hire, including any carriage let for hire by a coach-maker or other person whose trade or business it is to sell carriages or to let carriages for hire, provided it is not let for a period amounting to three months or more. By sect. 13 and the Second Schedule to the Finance Act, 1920 (*t*), amended by sect. 13 of the Finance Act, 1926 (*u*), a new list of duties was framed for mechanically propelled vehicles, which included those that came under the definition of hackney carriages. Sect. 1 of the Roads Act, 1920 (*a*), placed the duty of collection as regards mechanically propelled vehicles in the hands of the county and county borough councils (*b*), and these were to be paid into the Exchequer. But sect. 2 (3) of the Act, as in part repealed by L.G.A., 1929, requires an equivalent sum to be paid from the Exchequer into the Road Fund. By sect. 3 (4) (*b*) of the Act (*c*) there is to be paid out of the Road Fund every year to every local or police authority a sum determined by the Minister of Transport to represent the amount which would have been received by the authority on account of fees and charges for the licences of mechanically propelled hackney carriages, which by sect. 14 of the Act (*d*) are no longer to be charged fees for local licences. By sect. 89 of the Road Traffic Act, 1930 (*e*), on account of the definition in that Act already referred to (*f*), sect. 3 (4) (*b*) of the Act of 1920 referred to above is to apply only to such mechanically propelled hackney carriages as are not public service vehicles, because public service vehicles are dealt with in other provisions of that Act. Sect. 11 of the Roads Act, 1920 (*g*), requires a distinctive sign to be affixed to every vehicle chargeable with duty as a hackney carriage (save where exceptions are allowed by regulations of the Minister of Transport), and indicating the number of persons which the vehicle seats. Where the number of persons is limited by a licence, a penalty is recoverable under sect. 11 (2), if the carriage is used to seat a greater number. Provision is made in sub-sect. (3) for a rebate of duty where not less than twelve hackney carriages belonging to one owner are registered with a council, and one has been destroyed or withdrawn permanently from use, and application is made for a licence for another hackney carriage. A horsed omnibus was held (*h*) to be a hackney carriage for the purpose of excise duty under sect. 4 of the Customs and Inland Revenue Act, 1888 (*s*). [662]

London.—See title LONDON ROADS AND TRAFFIC.

(*s*) 16 Statutes 577. See also *Buckle v. Wrightson* (1864), 5 B. & S. 854; 42 Digest 851, 64, as to the necessity of having both a local licence and an excise licence.

(*t*) 16 Statutes 852, 861.

(*u*) *Ibid.*, 966.

(*a*) 19 Statutes 85.

(*b*) See definition of "county council" in s. 17; 19 Statutes 99.

(*c*) 19 Statutes 87.

(*d*) *Ibid.*, 98.

(*e*) 23 Statutes 670.

(*f*) See *ante*, p. 283.

(*g*) 19 Statutes 94.

(*h*) *Hickman v. Birch* (1889), 24 Q. B. D. 172; 39 Digest 240, 146.

HARBOURS

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See also titles :

CONSERVANCY AUTHORITIES ;
DISEASES OF ANIMALS ;
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LEE CONSERVATORS ;

PETROLEUM ;
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PUBLIC HEALTH ;
THAMES CONSERVATORS.

INTRODUCTION

Harbours and Ports.—Harbours originally indicated places of shelter for ships, whilst ports were places authorised by the Crown for the lading and unlading of ships (*a*). For legal purposes, the terms have now become almost synonymous, but in ordinary parlance a place which provides shipping accommodation by means of basins, docks, quays, wharves, piers, etc., access to which is obtained from open water, is denominated a port, whilst a place which provides similar accommodation within the confined limits of a water area enclosed by natural protection or by an artificial breakwater, and to which access is only obtained by a comparatively narrow entrance, is called a harbour. On the other hand, in shipping practice, the word “port” is used in the same general sense as “harbour” is now used in law.

In this title, as in the judicial and statutory definitions to be noticed later, the term harbour is used in the legal sense and includes a port. [663]

Descriptions of Harbour.—“Harbours,” as judicially defined in modern times, are places, whether artificial or natural, to shelter ships from the violence of the sea, and where ships are brought for commercial purposes to load and unload goods and persons, and quays are a necessary part of them (*b*).

In sect. 742 of the Merchant Shipping Act, 1894 (*c*), “harbour” is defined as including “harbours properly so-called, whether natural or artificial, estuaries, navigable rivers, piers, jetties, and other works in or at which ships can obtain shelter, or ship and unship goods or passengers.” Many definitions of harbours appear in Acts of Parliament dealing with a variety of special matters, but as their object is not so much to define what is a harbour as to specify what shall be treated as a harbour for the special purposes of the Act, they are of little use as a general definition. However commodious a place may be for vessels, either as a place of shelter or for the purpose of lading and unlading ships, it will not thereby become a harbour, for, as was pointed out in *Foreman v. Whitstable Free Fishers and Dredgers* (*d*), the establishment of a port (*i.e.* of a place for the lading and unlading of ships) can only, from time immemorial, be by authority of the Crown.

There are accordingly in English law, three essential requirements to the existence of a harbour: (1) that it should be a place of shelter, whether natural or artificial, for ships; (2) that it should be provided with the facilities necessary for the loading and unloading of goods or persons; and (3) that it should be authorised by the Crown as a port. [664]

Authorisation of Harbours.—In former days, grants and charters were the means of authorisation, and in the case of ancient harbours

(*a*) Hale, *De Portibus Maris*, cc. 2, 3.

(*b*) Lord Esher in *R. v. Hannam* (1886), 2 T. L. R. 234; 44 Digest 96, 764.

(*c*) 18 Statutes 411.

(*d*) (1869), L. R. 4 H. L. 266; 44 Digest 96, 763.

immemorial usage will lead to the inference that the port had a legal origin (*e*). In modern times, authorisation is granted by special Act of Parliament embodying the general provisions of the Harbours, Docks and Piers Clauses Act, 1847 (*f*), or in the case of works of an estimated value not exceeding £100,000, the procedure may be by provisional order of the Minister of Transport under the General Pier and Harbour Act, 1861 (*g*), or as respects a small fishery harbour by provisional order of the Minister of Agriculture and Fisheries under the Fishery Harbours Act, 1915 (*h*), see *post*, p. 311. [665]

Acts of Parliament.—The principal general Acts relating to harbours and their regulation are: The Harbours Acts, 1745 and 1814 (*i*); Public Harbours Act, 1806 (*k*); Harbours, Docks and Piers Clauses Act, 1847 (*l*); General Pier and Harbour Act, 1861, and the amending Act of 1862 (*m*); Harbours and Passing Tolls, etc., Act, 1861 (*n*); Harbours Transfer Acts, 1862 and 1865 (*o*); Dockyard Port Regulation Act, 1865 (*p*); Harbour Loans Act, 1866 (*q*); Merchant Shipping Acts, 1894 to 1928 (*r*); Anchors and Chain Cables Act, 1899 (*s*); Merchant Shipping (Liability of Shipowners and others) Act, 1900 (*t*); and Fishery Harbours Act, 1915 (*u*) (made permanent by the Expiring Laws Act, 1922).

The Harbours, Docks and Piers Clauses Act, 1847, applied originally to harbours, docks or piers authorised by an Act of Parliament which incorporated the Act of 1847 with the special Act (sect. 1), but by sect. 19 of the General Pier and Harbour Act, 1861, Amendment Act, 1862 (*a*), the Act of 1847 is deemed to be incorporated with every provisional order. By virtue of sect. 6 of the Act of 1862 (*b*), Part II. of that Act also applies to every provisional order, whether made before or after the Act of 1862. This is an inconvenient plan, which has not been followed in modern legislation, because the draftsman of a Bill or provisional order is apt to forget that some point with which he is asked to deal is already the subject of a provision in the general Act of 1847 or 1862. [666]

Harbour Authorities.—Harbours are subject to two classes of control: Government supervision, and management by an authority *ad hoc*.

Until 1919, the powers of Government departments in connection with harbours were mainly restricted to the approval of bye-laws and regulations, the issue of licences, and such matters as were reserved by the special Act or provisional order constituting the harbour to the previous approval of a Government department, and after the Harbours Transfer Act, 1862 (*c*), this control was exercised by the Board of Trade, except in the case of such harbours as came under the M. of A. & F. By sect. 2 (1) of the M. of T. Act, 1919 (*d*), all powers and duties of any Government department in relation, *inter alia*, to harbours, docks and piers were transferred to the Minister of Transport. [667]

There are two kinds of harbour authorities, according to the nature of harbours: (i.) the State, as represented by the Admiralty or the

(*e*) *Foreman v. Whitstable Free Fishers*, *supra*.

(*g*) 18 Statutes 101.

(*i*) *Ibid.*, 36, 40.

(*l*) *Ibid.*, 48.

(*n*) *Ibid.*, 105.

(*p*) *Ibid.*, 128.

(*r*) *Ibid.*, 162, *et seq.*

(*t*) 18 Statutes 443.

(*a*) *Ibid.*, 116.

(*c*) *Ibid.*, 119.

(*f*) 18 Statutes 48.

(*h*) *Ibid.*, 582.

(*k*) *Ibid.*, 39.

(*m*) *Ibid.*, 101, 113.

(*o*) *Ibid.*, 119, 127.

(*q*) *Ibid.*, 132.

(*s*) 19 Statutes 674.

(*u*) 18 Statutes 582.

(*b*) *Ibid.*, 114.

(*d*) 3 Statutes 422.

M. of T., for State-owned or State-managed harbours ; (ii.) an independent authority, called the harbour authority, for harbours not owned or managed by the State.

Practically the only harbours in England and Wales which are now under the close supervision of the State are the naval harbours and dockyards, and such harbours as are within the limits of a dockyard port and consequently subject to the control of the Admiralty as well as of the harbour authority. When this is so the provisions relating to dockyard ports must be considered as well as those applying to an ordinary harbour, see *post*, p. 310. The new and outer harbour at Holyhead is still under the M. of T.

As defined by sect. 742 of the Merchant Shipping Act, 1894 (*e*), a “ ‘ harbour authority ’ includes all persons or bodies of persons, corporate or unincorporate, being proprietors of, or intrusted with, the duty or invested with the power of constructing, improving, managing, regulating, maintaining, or lighting a harbour.” [668]

Classification of Harbours according to Ownership.—English and Welsh harbours are divided into five categories, according to the nature of the authority controlling, viz. :

- (1) The State, such as dockyards, Admiralty ports, harbours within the limits of a dockyard port, harbours of which control has been taken by the State.
- (2) Commissioners, trusts or boards of a representative character who do not run the undertaking for the purpose of private profit.
- (3) Municipal bodies, councils or corporations.
- (4) Railway companies, which have developed and run their harbours primarily for the purposes of their railway business, and for the profit of railway undertakings ;
- (5) Private owners, whether individuals or companies, who run their undertakings as a business for the purpose of profit to themselves or to their shareholders.

The nature of the control of any given harbour and the condition under which that control is exercised must be ascertained from the Act creating or regulating the harbour. In some instances there may be dual control, the most frequent instances of which occur when the harbour belongs to one authority, *e.g.* a municipal body, whilst the docks and warehouses belong to another, *e.g.* a railway company, or when an Admiralty port is subject to a public right of navigation. [669]

Out of some 141 recognised harbours in England and Wales, 9 are under Government control ; 50 are under boards of commissioners ; 32 are under municipalities ; 32 are run by railway companies ; and 18 are private undertakings. [670]

Powers of Local Authorities.—If a harbour is not run by a borough council or district council, the council are mainly concerned in the enforcement in the harbour of certain provisions of the P.H.As. and bye-laws made thereunder (with special powers if they have been constituted the port sanitary authority (*f*)) or as the rating authority or the valuation authority, or by virtue of certain special Acts, like

(*e*) 18 Statutes 411.

(*f*) As to port sanitary districts, see Vol. I., p. 421, and title PORT SANITARY AUTHORITIES.

the Explosives Acts, the Petroleum Acts, or the Fishery Harbours Act, 1915. The extent to which powers can be exercised by local authorities in connection with harbours for which they are not the harbour authority is indicated *post* at p. 312.

Where, however, the council of a borough or district have been constituted the harbour authority, their powers and duties as such are regulated by the general law of harbours and the special Act or provisional order so constituting them, but the council have no power to expend the local rate on a harbour undertaking, unless authorised by a provision in a special Act or provisional order (*g*). [671]

POWERS AND DUTIES OF HARBOUR AUTHORITIES

Construction of Works.—Before commencing the construction of any part of the works authorised by a provisional order, the harbour authority must deposit with the M. of T. working drawings of the whole works, and the works must be constructed in accordance with the approval of the M. of T., and cannot be altered or extended without their approval (*h*). If the works are abandoned or suffered to fall into disuse or decay, the M. of T. may remove them at the expense of the harbour authority (sect. 8). During the construction of the works the harbour authority must keep burning from sunset to sunrise such lights for the guidance of vessels as the M. of T. require (*i*). On payment of the rates authorised, all persons must be permitted to use the harbour for the shipping and unshipping of goods and the embarking and landing of passengers (*k*). [672]

Fortification.—The harbour authority may grant or lease to the War Office part of their land for the purpose of fortifications to protect their harbour (*l*). [673]

Acquisition of Land.—Where the special Act empowers land to be taken compulsorily, the Lands Clauses Consolidation Act, 1845, applies (*m*). The works authorised by the special Act may not be commenced until the plans and books of reference, with any necessary alterations, have been deposited as required by the Act (*n*). Works within the flow of the tide can only be constructed after the consent of the Board of Trade (now the M. of T.) and Admiralty or of the conservancy authority has been obtained (*o*). By agreement, lands may be purchased for providing additional yards, wharves, and places for deposit, etc., of goods, for the erection of weighing machines, toll houses, offices, warehouses, sheds, and other buildings and conveniences, and for making roads to the harbour, in addition to the land authorised by the special Act to be purchased compulsorily; and the authority may construct warehouses, storehouses, and other buildings and works as they may deem necessary for the accommodation of goods (*p*). [674]

(*g*) As to the power of a county, borough, district or parish council to contribute to the expenses of a fishery harbour authority, see *post*, p. 311.

(*h*) Amending Act of 1862, s. 7; 18 Statutes 114.

(*i*) *Ibid.*, s. 11.

(*k*) *Ibid.*, s. 13.

(*l*) General Pier and Harbour Act, 1861, s. 20; 18 Statutes 104.

(*m*) Act of 1847, s. 6; 18 Statutes 51.

(*n*) *Ibid.*, ss. 7—9.

(*o*) *Ibid.*, s. 12.

(*p*) *Ibid.*, ss. 20, 21.

Equipment and Staff.—The authority may provide cranes and weighing machinery, but if they provide cranes they must provide proper servants and labourers for working them at all reasonable times for the use of the public (*g*). Quays erected by the authority require the sanction of the Treasury and Customs before they can be used as legal quays (*r*). Before harbour dues can be collected, the authority must, if required by the Customs, erect a watchhouse and boathouse for the use of the tide surveyors of the Customs and their crew, and provide huts for the use of the revenue officers and fit them with the necessary weighing machinery (*s*).

The harbour authority may appoint harbour masters, dock masters and pier masters and remove these officers as they may think fit (*t*).

Unless the special Act otherwise directs, the harbour authority must provide a lifeboat and such mortar and rocket apparatus as the M. of T. may require (*u*). A competent crew for the boat and proper persons for working the life-saving apparatus must be provided (*u*). Similarly, a self-registering tide gauge with a barometer must be provided and a daily account of the weather and the working and results of the tide gauge and barometer must be kept, and the result and details thereof must be sent monthly to the M. of T. (*a*). [675]

Lights and Buoys.—Within the limits of the harbour, buoys for the guidance of ships must be placed, in such positions and of such a character as shall be directed by the Trinity House (*b*), who must sanction the erection of any lighthouse or beacon that the harbour authority desire to erect (*c*). [676]

Police.—Special constables nominated by the harbour authority may be appointed by two justices, with the powers, etc., of other constables, to act within the limits of the harbour and premises of the authority, and within one mile of the same (*d*). [677]

Meters and Weighers.—If the special Act permits, the authority may appoint and license persons to be meters and weighers within the limits of the harbour and dismiss them at their pleasure (*e*). The authority may make regulations for the government of these persons and fix their remuneration (*e*). When a sufficient number of such persons have been appointed, no other person, except a weigher or meter appointed by the Commissioners of Customs or licensed by the authority, may be employed (*f*). [678]

Harbour Rates.—A list of the rates for the time being payable must be fixed in front of the principal office of business of the harbour authority and on some conspicuous part of the quays, and if these lists are not kept up, the rates are not payable (*g*). Rates cannot be taken until the harbour is completed, unless the special Act otherwise directs (*h*). Tonnage rates on vessels are calculated as provided by the Merchant Shipping Acts for the purposes of registry (*i*). Harbour authorities have power to vary the rates from time to time, but must not give preference to any particular description of vessel or goods (*k*).

(*g*) Act of 1847, ss. 21, 22.

(*s*) *Ibid.*, ss. 14, 15.

(*u*) *Ibid.*, ss. 16, 17; 18 Statutes 54.

(*b*) *Ibid.*, s. 77; 18 Statutes 69.

(*d*) *Ibid.*, ss. 79, 80.

(*f*) *Ibid.*, s. 82; 18 Statutes 70.

(*h*) *Ibid.*, s. 25; 18 Statutes 56.

(*i*) See Act of 1894, s. 77 *et seq.*; Act of 1906, s. 54; Act of 1907, ss. 1, 2; 18 Statutes 191, 468, 478, 479.

(*r*) *Ibid.*, s. 24.

(*t*) *Ibid.*, s. 51.

(*a*) *Ibid.*, s. 18.

(*c*) *Ibid.*, s. 78.

(*e*) *Ibid.*, s. 81.

(*g*) *Ibid.*, s. 47; *ibid.*, 61.

It should be explained, however, that this power to vary rates is, in practice, very limited and that authorities are unable to increase rates beyond the maximum allowed by Parliament. The matter is treated in more detail *post*, on pp. 306—309. Rates are not payable by vessels which have paid, and, after leaving the harbour, have had to return from stress of weather or other sufficient cause (*l*), vessels in the service of His Majesty or any member of the Royal Family, or of the Customs, or of the Trinity House or the Commissioners of Northern Lights (*m*). Tonnage rates are enforceable by arrest or distraint of the ship and her tackle, and rates on goods by arrest and distraint of the goods of the person liable for the rates (*n*). In both cases there is a power of sale in the event of the rates not being paid; and in certain cases the collector of customs may withhold the clearance of any vessel liable for payment of the rates (*o*). [679]

Letting of Warehouses, etc.—Harbour authorities have power to lease or grant the use of any warehouses, buildings, wharves, yards, cranes, machines or other conveniences provided by them for a period not exceeding three years (*p*); but the Act of 1847 gives them no power to lease their harbour. [680]

Copy of Special Act.—It is the duty of the authority at all times to keep at their principal office of business a King's Printers' copy of the special Act, and to deposit a copy with the clerk of the county council, and all persons interested may inspect such copies (*q*). [681]

Bye-Laws.—The harbour authority may make bye-laws enforceable by penalties (*r*), but if the bye-laws affect persons other than the officers or servants of the authority, the bye-laws must be confirmed under sect. 85 by a judge of the superior courts or by quarter sessions, and must be published. Such bye-laws may regulate (1) the use of the harbour, etc. (*rr*); (2) the exercise of powers of the harbour master; (3) the admission of vessels into or near the harbour and their removal, and their good order and government when within the harbour; (4) the shipping, unshipping, landing, warehousing, stowing, depositing, and removal of goods within the harbour and the premises of the authority; (5) with the consent of the Commissioners of Customs, the hours during which the gates or entrances or outlets to the harbour shall be open; (6) the duties and conduct of all persons, whether servants of the authority or not, except Customs and Excise officers, employed in the harbour and on the premises of the authority; (7) the use of fires and lights within the harbour whether on vessels or not; (8) the use of cranes, weighing machines, weights and measures belonging to the authority, and the duties and conduct of weighers and meters employed by them; (9) the duties and conduct of the porters and carriers employed on the premises of the undertakers, and fixing the rates to be paid to them for carrying goods; and (10) for preventing damage or injury to vessels or goods within the harbour or on the premises of the authority (*s*).

(*k*) Act of 1847, s. 30; 18 Statutes 57.

(*l*) *Ibid.*, s. 29.

(*m*) *Ibid.*, s. 28.

(*n*) *Ibid.*, ss. 44, 45; 18 Statutes 60.

(*o*) *Ibid.*, s. 48.

(*p*) *Ibid.*, s. 23.

(*q*) *Ibid.*, s. 97 (18 Statutes 74), as amended by s. 83 (6) of L.G.A., 1888.

(*r*) *Ibid.*, ss. 83—90.

(*rr*) Dock owners may not impose conditions on the removal of goods from the dock without a valid bye-law (*L.N.E. Ry. Co. v. British Trawlers' Federation, Ltd.*, [1934] A. C. 279; Digest Supp.).

(*s*) *Ibid.*, s. 83; 18 Statutes 70.

Bye-laws for the above purposes cannot restrict the employment of persons to discharge cargo to those authorised by the authority, though a bye-law that only persons of good character shall be employed might be valid (*t*). [682]

Harbour Authority a Local Authority for Certain Acts.—The harbour authority are the local authority, within their harbour, for the execution of the Explosives Acts, 1875 and 1923 (*u*), and also for the grant of petroleum-spirit licences (*a*). By an order of the Minister of Agriculture under sect. 30 (3) of the Diseases of Animals Act, 1894 (*b*), a harbour authority may be constituted the local authority for their harbour for the purpose of the provisions of that Act relating to foreign animals. See, further, the title DISEASES OF ANIMALS in Vol. IV. [683]

Representation on Pilotage Authority.—Harbour and dock authorities having jurisdiction within a pilotage district are entitled under sect. 7 (2) of the Pilotage Act, 1913 (*c*), to be represented on a pilotage authority established under the Act, if they were represented on the authority existing in March, 1913, but in any case it would seem that a pilotage order of the Board of Trade may provide for the representation of harbour and dock authorities on a pilotage authority (*d*). The provisions of the Merchant Shipping Act, 1894, dealing with pilotage were repealed by the Act of 1913 which provided machinery for the complete reorganisation and revision of pilotage throughout the United Kingdom. [684]

Sites for Sailors' Homes.—Any municipal corporation at a port or harbour in the United Kingdom, and any harbour authority or harbour trustees, may with the consent of the M. of H. appropriate as a site for a sailors' home any land (*e*). [685]

Emigrant Ships.—A harbour authority having the control of any docks or basins from which emigrant ships are dispatched may, with the approval of the Secretary of State, make bye-laws under sect. 362 of the Merchant Shipping Act, 1894 (*f*): (1) for specifying the docks, basins, or other places at which persons arriving by sea at the port for the purpose of emigration, or actually emigrating therefrom, shall be landed and embarked; (2) for regulating the mode of their landing and embarkation, and for the stowing and safe custody of their luggage; (3) for licensing porters to carry their luggage, or otherwise attend upon them; and (4) for admitting persons to and excluding persons from access to the docks and basins.

A fine of not exceeding £5 may be attached to a breach of the bye-laws, and the authority may sue for and recover the fine instead of an emigration officer. Offenders against the bye-laws may be arrested without warrant, and detained until brought before a justice of the peace (*g*). See also title EMIGRANT RUNNERS AND PASSAGE BROKERS. [686]

(*t*) *Dick v. Badart* (1883), 10 Q. B. D. 387; 41 Digest 960, 8540.

(*u*) See s. 67 (4) of Explosives Act, 1875; 8 Statutes 424, and title EXPLOSIVES.

(*a*) See s. 2 of Petroleum (Consolidation) Act, 1928; 13 Statutes 1171, and title PETROLEUM.

(*b*) 1 Statutes 405.

(*c*) 18 Statutes 490.

(*d*) Act of 1913, s. 7; 18 Statutes 489.

(*e*) Merchant Shipping Act, 1894, s. 259; 18 Statutes 257.

(*f*) 18 Statutes 295.

(*g*) S. 362 (3); 18 Statutes 295.

Collision Regulations.—The Sea Regulations, 1910 (*h*), for preventing collisions provide (Art. 30) that “nothing in these rules shall interfere with the operation of a special rule, duly made by local authority, relative to the navigation of any harbour, river, or inland waters.” The effect of this provision is to keep in force all local rules of navigation in harbours or navigable waters, made by virtue of special Acts or otherwise with lawful authority, and to make them prevail over the general Sea Regulations when in conflict with the latter (*i*). [687]

Landing and Delivery of Goods.—Nothing in Part VII. (Delivery of Goods) of the Merchant Shipping Act, 1894, takes away or abridges any powers given by any local Act to any harbour authority whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods or takes away or diminishes any rights or remedies given to any shipowner, or wharfinger or warehouseman by any local Act (*k*). [688]

Wharves and Warehouses.—Where the harbour authority are also owners of wharves and warehouses and act in the capacity of wharfingers and warehousemen, they have as such the powers and duties specified in Part VII. of the Act of 1894, but they are not bound to take charge of any goods of which they would not have been liable to take charge if that Act had not passed nor to see to the validity of any lien claimed by any shipowner (*l*). They are entitled to rent in respect of goods entrusted to them and have power, at the expense of the owner of the goods, to do all such reasonable acts as in their opinion are necessary for the proper custody and preservation of the goods, and they have a lien on the goods for such rent and expenses (*m*). If their lien or any lien notified to them by the shipowner is not paid, they are allowed by sect. 497 of the Act (*n*) to sell the goods by auction, after written notice to the owner, if his address is known, and public notice by advertisement in the press. [689]

Testing of Anchors and Chain Cables.—By an Order in Council under sect. 5 of the Anchors and Chain Cables Act, 1899 (*o*), the Board of Trade may be directed to license a particular harbour authority to test the strength of anchors and chains, in addition to the bodies mentioned in the First Schedule to the Act. These include the committee of Lloyds, the Mersey Docks and Harbour Board and the Trustees of Swansea Harbour.

Regulations for testing have been prepared by the Committee of Lloyds and a special edition of the Act, with the regulations attached, has been issued by the Board of Trade (1932). [690]

Sea Fisheries.—By sect. 12 (2) of the Sea Fisheries Regulation Act, 1888 (*p*), a harbour authority may be given by order of the M. of A. & F. the powers of a local fisheries committee within the limits of their jurisdiction. For particulars, see title SEA FISHERIES. [691]

(*h*) Made under s. 418 of the Act of 1894; 18 Statutes 317.

(*i*) *The Bitinia*, [1912] P. 186; 41 Digest 725, 5629; *Karama (Owners) v. The Marie Gartz* (1914), 30 T. L. R. 702; 41 Digest 765, 6179.

(*k*) Act of 1894, s. 501; 18 Statutes 354.

(*l*) *Ibid.*, s. 500.

(*n*) 18 Statutes 353.

(*p*) 8 Statutes 748.

(*m*) *Ibid.*, s. 499.

(*o*) 19 Statutes 674.

Application of Factory Acts.—The provisions of the Factory and Workshop Act, 1901, with respect to : (i.) power to make orders as to dangerous machines ; (ii.) accidents ; (iii.) regulations for dangerous trades ; (iv.) powers of inspectors ; and (v.) fines in case of death or injury ; are applied by sect. 104 of the Act (*g*) as if every dock, wharf, quay and warehouse and all machinery or plant used in the process of loading or unloading or coaling any ship in any dock, harbour or canal are included in the word “factory,” and the purpose for which the machinery or plant is used were a manufacturing process. The expression “plant” includes any gangway or ladder used by any person employed to load or unload or coal a ship. Attention is called to the statutory rules and orders under the Act relating to machinery, and in particular to the Docks Regulations, 1934 (*r*), made under sect. 79 of the Act (*s*) dealing with dock and harbour machinery. Apart from liability under this Act, a harbour authority are liable for the state of the gangways between shore and ship, if the gangways belong to the authority (*t*). See under “Liability of Harbour Authorities to Persons using the Harbour,” at p. 302, *post*. [692]

Applications as to Railway Rates.—Under sect. 78 (1) (a) of the Railways Act, 1921 (*u*), any harbour board or conservancy authority may make an application as to railway rates under the Act whenever such an application may be made “by a body of persons representative of trade or a locality.” [693]

Transport Advisory Council.—Under the Second Schedule to the Road and Rail Traffic Act, 1933 (*a*), harbours and docks, other than those owned or controlled by railway companies, are entitled to one representative on the Transport Advisory Council. [694]

Housing of Workmen.—Under sect. 71 of the Housing Act, 1925 (*b*), any dock or harbour authority may at any time erect houses for the accommodation of persons of the working class employed by them. As regards powers of local authorities to arrange for the provision of housing accommodation by dock and harbour authorities, see title HOUSING. [695]

Diversion of Sewers, etc., under Harbour.—By sect. 331 of P.H.A., 1875 (*c*), harbour authorities are allowed, at their own expense, and on substituting other sewers, drains, culverts and pipes equally effectual and certified as such by the surveyor of the local authority, to take up, divert, or alter the level of any sewers, drains, culverts, or pipes constructed by any local authority, of and passing under or interfering with harbours or basins or the towing-paths thereof, and may do all such things as may be necessary for carrying into effect such taking up, diversion or alteration. As to the restrictions to which operations of the local authority are subject, see *post*, p. 314. [696]

(*g*) 8 Statutes 569.

(*s*) 8 Statutes 557.

(*t*) *Smith v. London and St. Katharine Docks Co.* (1868), L. R. 3 C. P. 326 ; 41 Digest 982, 8709.

(*u*) 14 Statutes 368.

(*b*) 13 Statutes 1041.

(*r*) S.R. & O., 1934, No. 279.

(*a*) 26 Statutes 915.

(*c*) *Ibid.*, 761.

PROTECTION OF HARBOUR

Combustible Materials, etc.—Any person being the owner or having charge of any combustible thing on any quay, dock, wharf, or deck of a vessel or at or near the pier, must within two hours, on receiving written notice from the harbour master, remove it to a place of safety (*d*). No person may heat or boil pitch, tar, resin, turpentine, oil or other combustible matter in any vessel or anywhere in the harbour except at places specially appointed for the purpose by the harbour authority, or have any fire or lighted candle or lamp in any vessel within the harbour, except with the harbour master's permission, or within any of the docks or works of the harbour, except as allowed by the bye-laws (*l*). Loaded guns are not permitted in the harbour, nor may any gunpowder be brought or allowed to remain on the quays or works of the harbour or in any vessel within the harbour, or at or near the pier, without the permission of the harbour authority (*e*).

By notice in writing, the harbour master can order the removal to a place of safety of any combustible things on the quays, docks or wharves or on the decks of vessels, and he can, if necessary, provide watchmen to guard such combustible things at night (*f*), and he may enter any vessel to search for any fire or light, and may extinguish it (*g*). [697]

Explosives.—In the event of a breach of a bye-law made by a harbour authority under the Explosives Act, 1875, in the case of a ship, boat, carriage or explosive, the harbour master may cause the same to be removed at the owner's expense to such place or otherwise dealt with in such manner as may be in conformity with the bye-laws (*h*). [698]

Petroleum.—See title PETROLEUM.

Unloading of Ballast.—Ballast, earth, ashes, stones or other things may not be thrown into the harbour, except for the purpose of recovering land washed away or for protecting land from future damage (*i*). The Harbours Act, 1745 (*k*), and sects. 11 to 16, 21 to 26 of the Harbours Act, 1814 (*l*), also contain provisions directed at the casting of ballast into harbours from ships. [699]

Damage to Harbour.—Damage done by a vessel or float of timber to the harbour or the works connected therewith must be made good by the owner, unless at the time the vessel was in charge of a pilot by compulsion of law (*m*). If the damage is the result of an inevitable accident, the owners of the vessel are liable (*n*), but where it is caused by the violence of the winds at a time when the master and crew have been forced to leave the vessel and consequently had no control over her, her owners are not liable (*o*). See also p. 304, *post*. [700]

Navigation and Use of Harbour.—Under sect. 52 of the Act of 1847 (*p*) the harbour master may give directions, subject to any special bye-law

(*d*) Harbours, Docks and Piers Clauses Act, 1847, s. 69; 18 Statutes 66.

(*e*) *Ibid.*, s. 71.

(*f*) *Ibid.*, ss. 69, 70.

(*g*) *Ibid.*, s. 72.

(*h*) Explosives Act, 1875, ss. 34, 39; 8 Statutes 404, 409.

(*i*) Act of 1847, s. 73; 18 Statutes 67.

(*k*) 18 Statutes 36—39.

(*l*) *Ibid.*, 40—44.

(*m*) Act of 1847, s. 74; 18 Statutes 68.

(*n*) *Dennis v. Tovell* (1872), L. R. 8 Q. B. 10; 41 Digest 974, 8641.

(*o*) *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743; 17 Digest 120, 288.

(*p*) 18 Statutes 62.

the harbour authority may have made, for regulating the time at which and the manner in which a vessel shall enter, go out of, or lie in the harbour, and its position, mooring or unmooring, placing and removing whilst therein; the position in which the vessel shall take in or land cargo, passengers and ballast, and the manner in which vessels shall be dismantled when entering the harbour. He may regulate the quantity of ballast which a vessel shall have on board when in the harbour, and may give directions for the removal of unserviceable vessels and other obstructions from the harbour. [701]

If the master of a vessel does not obey the direction of the harbour master as to mooring and removal, or if there is no person on board the vessel, the harbour master may cause her to be moved or moored as he thinks fit, but if there is nobody on board the vessel, he must put a sufficient number of persons on board to protect her before she is unmoored (*q*).

Vessels on entering the harbour must be dismantled as directed by the harbour master, and they may not enter or navigate a dock with sails set, and must be moored with substantial moorings to the satisfaction of the harbour master (*r*).

As soon as the harbour or dock is completed, vessels may not lie or be moored in the entrance thereof without the permission of the harbour master. If it is necessary that vessels should be moved for the purpose of repairing, scouring or cleansing the harbour or dock, they must be moved within three days after written notice from the harbour master, provided that the harbour master has given three days' notice of the intention to repair to the collector of Customs for the district, and has caused a like notice to be placed on view at the Custom House and at the office of the harbour authority (*s*).

The harbour master must cause a part of the harbour to be set apart for vessels that have discharged their cargo, and vessels that have discharged their cargoes must be removed to that part of the harbour without loss of time (*t*).

Goods lying on the quays for a longer time than is allowed by the bye-laws, and without the consent of the harbour authority, may be removed by the harbour master and kept till the expenses of removal are paid (*u*). If the expenses are not paid in seven days, or the owner cannot be found, the goods may be sold by the harbour master (*u*). [702]

Removal of Wrecks, etc.—Under sect. 56 of the Act of 1847 (*a*), the harbour master may remove any wreck or other obstruction to the harbour or its approaches, and any floating timber impeding the navigation, and can detain the wreck or other hindrance until the expense of removal is paid, or he may sell it, and out of the proceeds pay such expenses.

It may be noted in this connection, that blowing up a wreck is not removing it within the meaning of this section (*b*). The House of Lords held in the case referred to in note (*b*), that the Act of 1847 created a debt in respect of which an action may be maintained by the harbour authority against the person who is the owner of the wreck when the

(*q*) Act of 1847, s. 58; 18 Statutes 64.

(*s*) *Ibid.*, ss. 63—65.

(*u*) *Ibid.*, s. 68.

(*b*) *Arrow Shipping Co. v. Tyne Improvement Commissioners*, *The Crystal*,

[1894] A. C. 508; 41 Digest 822, 6807.

(*r*) *Ibid.*, ss. 59—61.

(*t*) *Ibid.*, s. 66.

(*a*) 18 Statutes 63.

expense of removal was incurred, although he was not owner when the wreck took place, thus over-ruling *Eglinton v. Norman* (c), under which the owner when the wreck occurred had hitherto been held responsible. Accordingly when a wreck has been abandoned to the underwriters and notice of abandonment has been given to the harbour authority, the authority removing the wreck after receipt of the notice cannot recover against the owner at the time of the accident, for he was not owner of the wreck at the material time (d). *Secus* when the underwriters have refused to accept the notice of abandonment (e).

Under sect. 57 of the Act (f), the harbour master may cause to be removed from the harbour any vessel which is laid by or neglected as unfit for sea service, and the charges of such removal may be recovered by summary complaint to the justices, and if not paid within seven days thereafter, the harbour master may distrain and sell. [703]

Beside the powers given to a harbour authority by sect. 56 of the Act of 1847, and by special Acts, harbour authorities are authorised by sect. 530 of the Merchant Shipping Act, 1894 (g), where any vessel is sunk, stranded or abandoned within any harbour or tidal water under their control, or in or near any approach thereto, so as to be likely to become an obstruction or danger to navigation or to lifeboats engaged in the lifeboat service, to do any of the following things: (1) take possession of and raise, remove or destroy the whole or any part of the vessel, and (2) light or buoy the vessel or part until it has been raised, removed or destroyed. The authority may also sell all the property recovered, and out of the proceeds reimburse themselves for the expenses incurred, rendering the surplus to the owner. If the property is of a perishable nature, it may be sold at once; if not, then seven days' notice must be given by advertisement in the local press and at any time before the sale the owner is entitled to have the property returned to him on his paying the harbour authority its fair market value. If the parties cannot agree the price, the Board of Trade nominate an umpire. Out of the sum the owner pays to the harbour authority, that authority can deduct the expenses of removing the wreck, and the surplus (if any) they hold in trust for the persons entitled to it.

If the proceeds of sale are not sufficient to pay expenses the owner is not liable under the Act of 1894 to make up the deficit, nor has the wreck-raising authority any power under the Merchant Shipping Acts to recover from the owner of the wreck the expenses incurred, though it may have power under other Acts (h), and notably under sect. 56 of the Harbours, Docks and Piers Clauses Act, 1847 (i).

If in the removal of wrecks there arises a doubt as to the jurisdiction of the harbour authority, or the general lighthouse authority (who are the general authority for the removal of wrecks in places where there is no harbour or conservancy authority (k)), the question whether the wreck is situated within or without the harbour or conservancy jurisdiction must be referred to the Board of Trade, whose decision is final (l).

(c) (1877), 46 L. J. (Q. B.) 557; 41 Digest 821, 6806.

(d) *Boston Corp'n. v. Fenwick & Co.* (1923), 39 T. L. R. 441; 41 Digest 822, 6809.

(e) *Dee Conservancy Board v. McConnell*, [1928] 2 K. B. 159; 44 Digest 120, 966.

(f) 18 Statutes 63.

(g) *Ibid.*, 364.

(h) *Arrow Shipping Co. v. Tyne Improvement Commissioners, The Crystal*, [1894] A. C. 508; 41 Digest 822, 6807.

(i) *Ante*, p. 300.

(k) Act of 1894, s. 531; 18 Statutes 365.

(l) *Ibid.*, s. 533.

The question whether, in sect. 530, the words allowing the harbour authority to "take possession, etc." of the wreck, are to be construed as obligatory or permissive was discussed but left undecided in *Dormont v. Furness Rail. Co. (m)*, but the later cases quoted in the next chapter on the liability of harbour authorities seem to leave no doubt that a harbour authority will be held liable for the consequences of not buoying, lighting and raising a wreck, particularly if they cannot plead lack of means. [704]

LIABILITY OF HARBOUR AUTHORITIES TO PERSONS USING HARBOUR

General Principles.—The general principles governing the liability of harbour authorities to persons using the harbour were stated as follows by Lord SALVESEN in *Aktieselskabet Dampskibet Forto v. Orkney Harbour Commissioners (n)*. "The only general duty that is imposed on harbour trustees is that of making their harbour reasonably safe for such vessels as they invite to it. If the entrance is difficult, I do not think there is any legal duty upon them to improve it, provided it is one which can be navigated by a person who knows the locality and exercises reasonable care. The suggestion that it was the duty of the Commissioners to remove all danger by removing the shoal is, I think, out of the question." The shoal, upon which the *Forto* stranded, made access to the entrance difficult. "It is in the interest of a particular harbour that it shall be made easily accessible to shipping, but the owners do not, in my opinion, take responsibility because they do not take steps involving expense entirely out of proportion to the means at their disposal, nor are they under any obligation to indicate the navigating channels by means of buoys even in cases where the absence of such marks makes it difficult for the vessel to find its way in. The penalty that they incur is that their harbour shall not be frequented. If, however, they take steps to buoy dangerous places, it is their duty to use reasonable care that the buoys shall not be able to get out of position so as to be misleading and a source of danger. The question of what is reasonable care is always a question of circumstances." [705]

Internal Conditions and Equipment.—As regards the internal conditions and works and equipment of a harbour, as distinguished from natural difficulties, the rule is that a harbour authority constituted by statute with a power to levy tolls, in consideration of making and maintaining the harbour, are liable to make good to the persons using it any damage occasioned by neglect (1) in not keeping the works in proper repair (o); or (2) in not keeping the docks, basins and channels safe for navigation (p); or (3) in not dredging so as to ensure sufficient depth (q); or (4) in failing to remove obstacles which may come in the

(m) (1883), 11 Q. B. D. 496; 41 Digest 958, 8525.

(n) [1915], S. C. 743; 41 Digest 977, 8662 *ii*.

(o) *Parnaby v. Lancaster Canal Co.* (1839), 11 A. & E. 223; 38 Digest 17, 90; *Smith v. London and St. Katharine Docks Co.* (1868), L. R. 3 C. P. 326; 36 Digest 37, 215; *Pells v. P.L.A.* (1920), 2 Lloyds R. 327; *Scheepvaert v. Aire and Calder Navigation* (1924), 17 Lloyds R. 178.

(p) *Thompson v. North Eastern Rail. Co.* (1862), 2 B. & S. 119; 41 Digest 958, 8524; *Bede S.S. Co. v. River Wear Commissioners*, [1907] 1 K. B. 310; 41 Digest 979, 8677.

(q) *Mersey Docks Trustees v. Gibbs* (1866), L. R. 1 H. L. 93; 41 Digest 977, 8665; *The Burlington* (1895), 72 L. T. 890; 41 Digest 980, 8687.

way of navigation or to abate nuisances to vessels (*r*); or (5) to remove wrecks as soon as possible and to buoy them until removed (*s*).

As regards the vexed question of buoying and lighting the channel to a harbour, there seems to be at law no obligation on a harbour authority to do so in the case of natural difficulties, even when these make it difficult for a vessel to find its way in, as pointed out by Lord SALVESEN in the *Forlo Case*, *supra*, but if the special Act constituting the harbour places upon the authority the duty of applying, to the buoying and lighting of the channel, the harbour dues, they will be held liable for accidents caused by failure to buoy or light (*t*).

The extent of the means at the disposal of a harbour authority may also affect their liability for not taking steps to ensure safety of access to, or of use of, a harbour, for as stated by Lord SALVESEN in the case above referred to the owners do not take responsibility because they do not take steps involving expense entirely out of proportion to the means at their disposal.

Some Irish cases seem to go further and even to establish that a harbour authority may not be held liable for accidents due to the non-removal, owing to lack of funds, of obstructions (*u*). [706]

No Warranty of Safety.—As a rule, a harbour authority cannot be held to give an absolute warranty that the harbour is safe and will not be held liable for a ship grounding in the harbour unless the circumstances are such as to establish negligence on the part of the authority (*a*), but as pointed out by the court in *The Devon*, *infra*, a whole series of cases from *Mersey Docks Trustees v. Gibbs* (*b*), down to the present day establishes that the duty of the owners is to use reasonable care that the docks and berths are reasonably fit for the ships they invite to use them. The owners will be responsible even when they did not know of the obstruction, if the obstruction ought to have been discovered and removed had the owner's servants used reasonable care and judgment. And, as stated by Lord SALVESEN in the remarks quoted at the beginning of this chapter, the question of what is reasonable care is always a question of circumstances. [707]

Responsibility for Specific Statements.—If, however, a harbour authority have issued definite statements as regards, for instance, the height of water in particular places or the minimum height of water over the bar or sill at the entrance of the harbour, and do not take the necessary measures to ascertain and ensure that the stated height is maintained, they will be held to have warranted the height of water at the particular place indicated and to be liable in damages for consequential detention of ships (*c*). [708]

(*r*) *Margate Pier and Harbour Co. v. Margate Town Council* (1869), 33 J. P. 437; 41 Digest 982, 8704; *The Devon* (1923), 40 T. L. R. 136; 41 Digest 958, 8528.

(*s*) *Anchor Line (Henderson Bros.), Ltd. v. Dundee Harbour Trustees* (1922), 38 T. L. R. 299; 41 Digest 978, 8674; *Pacific Steam N. C. v. Mersey Dock and Harbour Board, The Orita* (1925), 22 Lloyd's R. 235 and 383; *St. Just S.S. Co. v. Hartlepool Harbour Commissioners* (1929), 34 Lloyd's R. 344.

(*t*) *Dormont v. Furness Rail. Co.* (1883), 11 Q. B. D. 496; 41 Digest 820, 6799.

(*u*) *Campbell v. Hornsby* (1873), 1 R. 7 C. L. 540; 41 Digest 982, *c*.

(*a*) *Thomson v. Greenock Harbour Trustees* (1875), 3 R. (Ct. of Sess.) 1194; 41 Digest 981, *i*; *Metcalfe v. Hetherington* (1855), 11 Ex. 257; 34 Digest 154, 1208.

(*b*) (1866) L. R. 1 H. L. 93.

(*c*) *Bede S.S. Co. v. River Wear Commissioners*, [1907] 1 K. B. 310; 41 Digest 979, 8677.

Liability for Acts of Servants.—Where a harbour authority employ or use tugs to tow ships about the harbour for reward, they are liable for damage that may happen through the neglect of their employees to exercise reasonable care and skill in the conduct of the towage or to supply tugs of adequate power (*d*).

The harbour authority are also liable for the acts or defaults of their harbour master, and shipowners when compelled to move their ships by order of the harbour master are not liable for the consequences of obeying a negligent order (*e*), and are entitled to recover if damage is sustained by a ship through the instructions of the harbour master (*f*).
[709]

Safety of Piers and Wharves.—It is the duty of a wharfinger or pier owner, before inviting a vessel to unload at a wharf or pier, to see that the berth is in a fit state to receive the vessel. They are held to warrant that they have taken reasonable care to see that the berth, which is the essential part of the use of the pier, is safe; and if it is not safe, and if they have not taken such reasonable care, it is their duty to warn persons with whom they have dealings that they have not done so (*g*).

It may happen that the berth alongside the wharf does not belong to the wharfinger, but is under the control of a harbour authority; but this fact will not relieve the wharfinger of his duty. The harbour authority will also be liable to a person whose vessel is injured at the berth if they have neglected their duty of taking reasonable care to see that the berth is in a fit condition (*h*). [710]

DUTY AND LIABILITY OF VESSELS USING HARBOUR

Damage by Ship to Harbour Works.—The master and owner of a vessel are liable for damage done by her to the works of the harbour, unless the vessel was at the time in charge of a pilot by compulsion of law, or the damage was caused by an act of God in the absence of any person in charge of the vessel (*i*).

The liability under sect. 74 is absolute subject to the limitations of the section only, and it is immaterial that the damage was caused without negligence on the part of the ship (*k*). The ship herself is liable *in rem* whether she be the actual instrument doing the damage or causes some other vessel or thing to do the damage (*l*), and for this purpose the sinking of a barge which blocked the entrance to a dock is damage to the dock (*m*). [711]

(*d*) *The Ratata*, [1898] A. C. 513; 41 Digest 982, 8697.

(*e*) *The Bilbao* (1860), Lush. 149; 41 Digest 972, 8632; *Reney v. Kirkcudbright Magistrates* (1892), 7 Asp. M. L. C. 221; 41 Digest 978, 8670.

(*f*) *The Rhosina* (1885), 54 L. J. (P.) 72; 41 Digest 983, 8710.

(*g*) *The Moorcock* (1889), 14 P. D., at p. 70; 44 Digest 104, 828.

(*h*) *The Bearn*, [1906] P. 48; 41 Digest 980, 8690.

(*i*) Act of 1847, s. 74; 18 Statutes 68; *Dennis v. Tovell* (1872), L. R. 8 Q. B. 10; 41 Digest 974, 8641; *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743; 41 Digest 974, 8643. P. 299, *ante*.

(*k*) *Great Western Rail. Co. v. The Mostyn (Owners)*, [1928] A. C. 57; 41 Digest 974, 8645.

(*l*) *The Excelsior* (1868), L. R. 2 A. & E. 268; 41 Digest 971, 8619; *The Industrie* (1871), L. R. 3 A. & E. 303; 41 Digest 704, 5395.

(*m*) *The Chr. Knudsen*, [1932] P. 153; Digest (Supp.).

LIMITATION OF LIABILITY OF HARBOUR AUTHORITIES AND OF OWNERS
OF SHIPS

Extension of Limitation to Harbour Authorities.—Sect. 2 of the Merchant Shipping (Liability of Shipowners and others) Act, 1900 (*n*), extended to harbour, dock, canal and conservancy authorities the limitation of liability granted to shipowners by sect. 503 of the Merchant Shipping Act, 1894 (*o*); and sect. 1 of the Act of 1900 (*p*) at the same time extended the protection of shipowners to all cases where without their actual fault or privity, any loss or damage is caused to property or rights of any kind, whether on land or on water or fixed or moveable, by reason of the improper navigation or management of the ship. Sect. 2 limits the liability to an aggregate amount not exceeding £8 a ton of the tonnage of the largest registered British ship which, at the time of such loss or damage occurring, is, or within the five years previous has been, within the area over which such dock or canal owner, harbour authority or conservancy authority performs any duty or exercises any power.

The limitation of liability relates to the whole of the losses and damages occurring on one distinct occasion, although they may have been sustained by more than one person (*q*), for example, if the dock gates collapse and twenty vessels be injured, the limit of the authority's liability would be one sum calculated as above, which would be divided amongst the twenty vessels according to the proportions of their damage.

In the *City of Edinburgh* (*r*), the plaintiffs, who were owners of a graving dock at Garston, had undertaken to repair the ship, which was lying at the Hornby Dock at Liverpool. A fire having occurred on board, the plaintiffs took an action in limitation of liability, claiming that, in their capacity of dock owners, they were entitled to a declaration of limitation under sect. 2 of the Act of 1900. The court held that, as the repairs at Hornby had nothing whatever to do with the ownership of a dock at Garston, or with the fact that the plaintiffs were dock owners, they were not entitled to a decree of limitation. [712]

Extension of Limitation to Lighters, Barges, etc.—Sect. 1 of the Merchant Shipping Act, 1921 (*s*), extended the provisions of the Act of 1894 and of amending or extending Acts in so far as related to the registry of ships and to the liability of owners of ships, to every description of lighter, barge or like vessel used in navigation in Great Britain, however propelled, subject to the proviso that such lighter, barge or like vessel, when used exclusively in non-tidal waters other than harbours, should not be deemed to be used in navigation. [713]

Measurement of Tonnage.—Under sect. 503 (2) of the Act of 1894, as amended by sect. 69 of the Merchant Shipping Act, 1906 (*t*), for the purpose of limitation of liability, the tonnage of a steamship is her registered tonnage ascertained in accordance with the Act with the addition of any engine-room space deducted for the purpose of ascertaining that tonnage. See p. 308, *post*. [714]

Detention after Decree of Limitation.—In *Mersey Docks and Harbour Board v. Hay* (*u*), the House of Lords decided some important

(*n*) 18 Statutes 444.

(*o*) *Ibid.*, 355.

(*p*) *Ibid.*, 443.

(*q*) Act of 1900, s. 3; 18 Statutes 445.

(*r*) [1921] P. 274; 41 Digest 917, 3082. But see also *Ruapehu (Owners) v. Green*, [1927] A. C. 523; 41 Digest 917, 3083, where repairs were performed in the same dock, and *The Ruapehu* (No. 2), [1929] p. 305; Digest Supp.

(*s*) 18 Statutes 802.

(*t*) S. 503 (2) is printed, as amended, at 18 Statutes 355.

(*u*) [1923] A. C. 345; 41 Digest 975, 8654.

points with regard to the power of detention of a ship after her owners had obtained a decree of limitation and upon the distribution of the statutory amount between various claimants. The ship had caused damage to the dock and also to the property of persons other than the owners of the dock. The dock authority detained the ship and refused to release her after the shipowners had obtained a decree of limitation. A question also arose as to whether the shipowners were entitled to a decree and whether that decree would cover the other claimants according to priority or according to amounts of claims. The House decided (i.) that the shipowners were entitled to a decree; (ii.) that the exercise by the harbour board of their statutory power to detain the ship which had damaged their dock conferred upon them a possessory lien and that they were entitled to detain the ship after the decree of limitation until their lien was discharged; (iii.) that sect. 1 of the Act of 1900 did not affect the harbour board's lien beyond limiting the amount for which it could be exercised; and (iv.) that the court, in distributing the statutory amount amongst claimants, ought to have regard to priorities as well as to amounts of claim. [715]

HARBOUR DUES AND CHARGES BY HARBOUR AUTHORITIES

Power to Levy.—For the maintenance of the works the harbour authority may levy rates on ships and goods brought to the harbour, and make charges for such things as they are authorised to do on behalf of the owner of the ship or goods.

The charges which a harbour authority are entitled to make for the use of the harbour are therefore differentiated according as to whether they are a charge on shipping or a charge on goods. Much confusion arises from the frequent use of the terms "harbour [or port] dues" and "harbour [or port] charges" to cover both. In a case in 1896 (*a*), MATHEW, J., defined "port charges" as meaning "in their ordinary sense, such charges as a ship would have to pay before she leaves port," and the expression, strictly, only applies to charges for the non-payment of which the ship could be detained by the harbour authority. Other charges which an authority are empowered or entitled to make against the ship or against other parties are not "harbour dues" or "harbour charges" within the legal meaning, which is also the meaning of the term when used in charter-parties, as evidenced by the common clause, "charterers paying all dues and duties on the cargo and steamer paying all *port charges*, pilotages, etc., as customary." [716]

Light and Pilotage Dues.—Harbour or port dues have also been held not to be restricted to those charges which the authority, as owner of the harbour, may make against the ship, but also to cover charges made by other authorities similarly entitled and which the harbour authority may collect, such as light dues (*b*) and pilotage dues (*c*). [717]

Dues which form Harbour Dues.—Apart from light and pilotage dues, the main harbour dues for which a ship is responsible are :

- (1) The tonnage dues, for entering the harbour. These, in most cases, cover what are also called "mooring dues" and

(a) *Newman and Dale v. Lamport and Holt*, [1896] 1 Q. B. 20; 41 Digest 313, 1741.

(b) *Newman and Dale v. Lamport and Holt*, *supra*.

(c) *Svensden v. Wallace* (1885), 10 App. Cas. 404; 41 Digest 600, 4260.

“ anchorage dues,” but may or may not cover “ berthage dues.”

- (2) Berthage dues, which may be charged separately when the ship berths at a quay, or wharf or pier, and are also tonnage dues.
- (3) Dock dues, which are also generally tonnage dues, and which are charged upon a ship entering or using the harbour authority's docks.
- (4) Wharfage or quayage dues when they are made chargeable to the ship. These are generally a charge per ton of goods landed over the wharf, quay or pier, “ a charge made for the provision of quays on which the ship is to unload and not a rate for the use of quays for cargo ” (d).
- (5) Cranage, at scheduled rates, when the use of the harbour authority's cranes is necessary to the discharge of the ship.
- (6) Towage dues when towage is compulsory.
- (7) Dues which the authority may be empowered to impose for special purposes relating to navigation, such as “ buoyage dues ” for the buoing of dangerous places which the authority are otherwise under no legal obligation to buoy; or “ dredging dues,” when a special charge is authorised to provide for maintenance dredging, particularly in ports or harbours exposed to abnormal silting up.

Generally, all charges made to a ship “ in return for the provision of appliances and structures without which she could not perform her contract ” to load or unload at a port are “ charges to be paid by the ship, and accordingly ‘ port charges.’ ” [718]

Charges which are not Harbour Dues.—But a charge, for instance, for coals supplied to a ship obliged to put into a harbour on account of a breakdown of machinery, would not come within the definition of harbour dues or port charges (e).

The following charges made by harbour authorities also are not chargeable to the ship and do not come within the judicial definition of harbour dues or port charges: (1) lighterage (if any); (2) dock rates on goods; (3) wharfage or quayage—for the use of wharves or quays by cargo (as distinguished from the port charge, if any, for the provision of wharves or quays); (4) portorage and weighing; (5) haulage or cartage; (6) cranage; or (7) warehousing. [719]

Liability for Charges.—In respect of all charges which are not harbour dues or port charges, or which fall upon the ship for other reasons, the liability is upon the goods, and upon these the harbour authority have the right of distress and sale.

In practice, the question whether any specific charge, other than a tonnage charge, is a port charge and payable by the ship is more a matter between the shipowner and the charterer, or consignee of the goods, than a matter for the harbour authority, for the determination of what is necessary for the ship to do or pay in order to fulfil her contract depends upon the nature of the contract. The fact that a harbour authority may prescribe by bye-laws that certain dues are payable by the ship is not enough to convert them into port charges, if they are

(d) *Per* WALTON, J., in *Field Line (Cardiff), Ltd. v. San Paulo Gas Co.* (1908), unreported but quoted and followed in *Societa Anonima Ungherese di Armamenti Marittimo v. Hamburg South American S.S. Co.* (1912), 106 L. T. 957; 41 Digest 313, 1744.

(e) *The Durham City* (1889), 14 P. D. 85; 41 Digest 313, 1739.

not so within the legal meaning of the term, and the effect of such a bye-law is merely to indicate to whom the harbour authority will look for payment and not to establish ultimate responsibility (f). The question of the effect of an arrest of a ship by a harbour authority for non-payment of dues under such a bye-law does not seem to have arisen. [720]

Ascertainment of Tonnage.—The rules for the ascertainment of tonnage are contained in sects. 77 to 87 and in the Second and Third Schedules to the Merchant Shipping Act, 1894 (g), amended, as regards allowance for water ballast space, by sect. 54 of the Merchant Shipping Act, 1906 (h), and as regards space for propelling power by sect. 1 of the Merchant Shipping Act, 1907 (i).

Sect. 87 of the Act of 1894 (k) enables a harbour authority, with the consent of the Board of Trade, to levy rates upon the registered tonnage ascertained in accordance with the Act, notwithstanding the provisions of any local Act authorising them to levy rates upon some different system of tonnage measurements, but sect. 2 of the Act of 1907 (l) saves the right of any dock or harbour authority entitled under any Act or order having the effect of an Act to charge tonnage rates or dues otherwise than on registered tonnage. But such exceptions are few. [721]

Rules as to Foreign Ships.—As regards foreign ships, sect. 84 of the Act of 1894 (m), provides that, in the case of countries which have tonnage measurements regulations similar to those in force under the Merchant Shipping Acts, an Order in Council may be issued making the registered tonnage of ships of those countries acceptable in British territories for all purposes for which British registered tonnage is acceptable. Orders in Council have been issued in the case of certain countries, whose ships are accordingly charged tonnage dues in British ports on the basis of the registered tonnage of their country of registration. A list of the Orders in Council in force under this section will be found in 18 Statutes at p. 195. [722]

Increase of Rates Acts.—In view of the fact mentioned, *ante*, p. 295, that the power to vary rates, given by sect. 30 of the Harbours, Docks and Piers Clauses Act, 1847 (n), did not enable a harbour authority to increase rates beyond the figure mentioned in their special Act, it became necessary, shortly after the War, to allow harbour authorities to increase their rates beyond the statutory figure, "having regard to the cost of labour and materials or any other circumstances." The Harbours, Docks and Piers (Temporary Increase of Charges) Act, 1920 (o) (from sect. 1 of which the words just quoted are taken), permits the Minister of Transport, on the application of a harbour, dock or pier authority, by order "to provide for the modification of any statutory provisions regulating the charges to be made in respect of any such undertaking." Except in cases of particular urgency, the Minister, before making an order, is to submit the authority's request to the Rates Advisory Committee created by the M. of T. Act, 1919, who

(f) *Societa Anonima Ungherese di Armamenti Marittimo v. Hamburg South American S.S. Co.* (1912), 106 L. T. 957; 41 Digest 313, 1744.

(g) 18 Statutes 191—196, 418, 421.

(i) *Ibid.*, 478.

(l) *Ibid.*, 479.

(n) *Ibid.*, 57.

(h) 18 Statutes 468.

(k) *Ibid.*, 196.

(m) *Ibid.*, 194.

(o) *Ibid.*, 589.

under sect. 2 of the Act of 1920 (*p*), have power to hear witnesses on oath and compel the production of documents. The limits of increase differ as respects an undertaking of a public body not carried on for profit and a private undertaking (s. 1 (1) (a) and (b) of that Act). The Act is continued annually by the Expiring Laws Continuance Act. The application of the Act to harbours, docks and piers owned by railway companies was modified by an amending Act of 1922 (*q*). [723]

BORROWING POWERS AND GOVERNMENT GRANTS

Borrowing Powers.—By sect. 21 of the Harbours Transfer Act, 1862 (*r*), a harbour authority were allowed to borrow any amount whatever, subject to the approval of the Board of Trade (*s*), and to the other conditions imposed by sect. 3 of the Harbours and Passing Tolls, etc., Act, 1861 (*t*), notwithstanding any limit contained in their special Act. But if they are a company and if the special Act restricts the power of borrowing until a definite portion of the capital is paid up or subscribed for, the special Act overrides the above power. Nor do loans made under the Act of 1861 rank with loans made under the special Act of the harbour authority, unless the loan might have been raised under the special Act solely (*u*). [724]

Lending by Public Works Loan Commissioners.—Harbour authorities whether they have or have not power to borrow under their special Act (*a*), may, subject to the approval of the Minister of Transport, obtain a loan from the Public Works Loan Commissioners (*b*). Harbours and piers and any work for which the commissioners are authorised to lend by sect. 3 of the Act of 1861 are also included in the First Schedule to the Public Works Loans Act, 1875 (*c*), among the works for which money may be lent by the commissioners. [725]

Guarantee by Local Authority.—Where promoters of a provisional order under the General Pier and Harbour Act, 1861, are a rating authority, or commissioners or trustees or other body or person who manage or undertake the works without any view to payment of a dividend or profit out of the revenue of such works, and difficulties arise in raising the loan specified in the provisional order, while the construction of the works is of so great importance to the inhabitants of the town or place where the works are to be constructed that they would be willing to guarantee the loan if they had the power, sect. 7 of the Public Works Loans Act, 1882 (*d*), provides for that power being conferred by order of the Minister and prescribes how it may be exercised. The approval of the M. of H. is also necessary. Under sect. 7 of the Act of 1882 as amended by sect. 4 of the Public Works Loans Act, 1887 (*e*), “the rating authority” already referred to is a county council, county borough council or county district council. [726]

Suspension of Special Act as to Repayment.—The Harbour Loans Act, 1866 (*f*), allows the M. of T. to suspend the provisions of a special

(*p*) 18 Statutes 590.

(*q*) *Ibid.*, 803.

(*r*) Now the Minister of Transport.

(*s*) Harbours Transfer Act, 1862, s. 21; 18 Statutes 124.

(*t*) *Ibid.*, s. 20; 18 Statutes 124.

(*u*) See Harbours and Passing Tolls, etc., Act, 1861, s. 3 (18 Statutes 106); M. of T. Act, 1919 (3 Statutes 422).

(*a*) 12 Statutes 273.

(*b*) *Ibid.*, 291.

(*r*) *Ibid.*, 124.

(*t*) 18 Statutes 106.

(*d*) *Ibid.*, 279.

(*f*) 18 Statutes 132.

Act as to the redemption of loans where money had been borrowed from the Public Works Commissioners, but provided that any money so borrowed should not, when repaid to the commissioners be reborrowed. [727]

Government Grants.—Sect. 17 of the M. of T. Act, 1919 (*g*), enabled the Minister to make advances for the construction, improvement or maintenance of harbours, docks or piers up to a million pounds for any one work, but this provision has so far remained inoperative, grants in aid of harbour undertakings having, *after* 1920, been made through the Unemployment Grants Committee, which was dissolved in 1932. [728]

DOCKYARD PORTS

A dockyard port means any port, harbour, haven, roadstead, sound, channel, creek, bay or navigable river of the United Kingdom in, on, or near to which His Majesty has any dock, dockyard, steam factory yard, victualling yard, arsenal, wharf or mooring, and the limits of such port may be defined from time to time by Order in Council (*h*). The dockyard ports in England and Wales are Chatham, Deptford, Devonport, Pembroke, Plymouth, Portland, Portsmouth and Sheerness.

Regulations for the port are made under sect. 5 of the Act of 1865 by Order in Council, and their execution is superintended by an officer for each port, called the King's Harbour Master. He has power to cause any vessel to be moored, anchored, placed, unmoored or removed in conformity with any Order in Council made under the Act, and by sect. 12 (*i*) he, or any person authorised in writing by the Admiralty, may search any vessel for gunpowder, loaded guns, fire, light or combustible substances suspected to be on board in contravention of the Order in Council, and may extinguish such fire or light. Under sect. 13 the harbour master may remove from the harbour any wreck, or floating timber, or obstruction to the port.

Sect. 23 of the Act of 1865 (*k*) saves the rights of property, privilege, jurisdiction, or any powers of conservancy held or exercised by any body or person in, to, upon, or over any part of a dockyard port. Consequently it happens that conflicting rules and regulations may apply in waters subject to the jurisdiction of the King's Harbour Master.

With respect to Acts of Parliament and provisional orders which may affect dockyard ports, the Admiralty may require that they, and not the Board of Trade, shall be the body to protect the rights, navigation, etc., referred to in sect. 8 of the Harbour Transfer Act, 1862 (*l*). The powers of the Admiralty in reference to harbours, which were transferred to the Minister of Transport by sect. 2 (1) of the M. of T. Act, 1919 (*m*), do not include powers in connection with dockyard ports, as such powers were excepted from the transfer by a proviso to the sub-section. Bye-laws under sect. 34 of the Explosives Act, 1875 (*n*), as to the conveyance and loading of explosives in dockyard ports are to be made by the Admiralty (*o*), as also are bye-laws under sect. 7

(*g*) 3 Statutes 435.

(*h*) Dockyard Port Regulation Act, 1865, ss. 2, 3; 18 Statutes 128.

(*i*) 18 Statutes 130.

(*k*) *Ibid.*, 131.

(*l*) See s. 9; 18 Statutes 122.

(*m*) 3 Statutes 422.

(*n*) 8 Statutes 404.

(*o*) See s. 4 of the Explosives Act, 1923; 8 Statutes 447.

of the Petroleum (Consolidation) Act, 1928 (*p*), as to the loading and carriage of petrol by ships in a dockyard port. [729]

FISHERY HARBOURS

Purpose of Act of 1915.—The Fishery Harbours Act, 1915 (*q*), which was made a permanent Act by the Expiring Laws Act, 1922, is intended to apply only to small harbours which are principally used by fishing boats, and which are suitable for control by municipal bodies. For the purpose of facilitating the improvement of such harbours, the Act provides that a provisional order may be made by the Minister of Agriculture and Fisheries and that, unless objected to within thirty days by a memorial from a fishery committee or the council of any county borough, county district or parish in which any part of the harbour is situate, or any twenty inhabitant householders of any such borough, district or parish praying that the provisional order shall not be confirmed without the authority of Parliament, the Minister, at the expiration of the thirty days, shall confirm the provisional order, which then has effect as an Act of Parliament. These powers do not seem to have been transferred to the Minister of Transport by sect. 2 of the M. of T. Act, 1919 (*r*).

The Act includes within the definition of harbour “any haven, cove or other landing place,” and the “works” to which it applies include slipways, capstans, and other works facilitating the landing, launching or beaching of vessels in any harbour (*s*).

An order under the Act may by sect. 2 (5) constitute one harbour authority for two or more harbours and may abolish any existing harbour authority with their consent, and may transfer to the harbour authority constituted by the order the property, rights, powers and liabilities of any existing harbour authority, but not so as to prejudice the rights of any creditor of the existing harbour authority without his consent, and may for that purpose repeal any order or enactment constituting or regulating the authority so abolished.

References to orders made by the M. of A. under the Act of 1915 may be obtained from the yearly volumes of S.R. & O., see *e.g.* 1929, p. 1484; 1931, p. 1556; and 1932, p. 1818. [730]

Contributions by Local Authorities and Sea Fisheries Committees.—Work under the Act is intended to be carried out mainly with the help, if not on the initiative, of the local authorities, and, under sect. 3 (1) of the Act (*t*), the council of a county, county borough, county district or parish may, with the consent and subject to regulations made by the M. of H., contribute or undertake to contribute to the expenses of a harbour authority constituted under the Act. The expenses so incurred by a county council are to be defrayed as general county expenses or, if the consent of the Minister so provides, as expenses for special county purposes charged on such part of the county as may be specified in such consent. Paras. (b) and (c) of the sub-section dealt with the expenses of borough, district and parish councils, but were repealed by L.G.A., 1933, and replaced by general provisions in that Act. Nearly the whole of sect. 3 (2) was also repealed by the Act of

(*q*) See s. 7 (4); 13 Statutes 1174.

(*r*) 3 Statutes 422.

(*t*) 18 Statutes 584.

(*g*) 18 Statutes 582.

(*s*) S. 2 (4); 18 Statutes 583.

1933, and the remainder merely provides that a council may borrow for the purposes of the Act of 1915. Any such borrowing will now be subject to sect. 195 of the Act of 1933 (*u*), and will require the consent of the M. of H. under sect. 198 of that Act (*a*).

A committee constituted under the Sea Fisheries Regulation Act, 1888, may also contribute or undertake to contribute to the expenses of a harbour authority constituted under the Fishery Harbours Act, 1915, for a harbour situate wholly or partly in the district of the committee (*b*). [731]

POWERS AND DUTIES OF LOCAL AUTHORITIES AS REGARDS HARBOURS AND VESSELS

Abatement of Nuisances.—By sect. 110 of the P.H.A., 1875 (*c*), the provisions of that Act relating to nuisances (*viz.* sects. 91—109, 111) were extended to any ship or vessel lying in any river, harbour or other water within the district of a sanitary authority, as if the ship or vessel were a house. Where she is lying within a river, harbour, or other water which is not within the district of a sanitary authority, she is to be deemed to be within the district of such sanitary authority as the M. of H. may prescribe. Where no sanitary authority has been prescribed, then she is deemed to be subject to the jurisdiction of the sanitary authority whose district nearest adjoins the place where the ship, vessel or boat is lying. The officer in charge of the ship or vessel is to be deemed to be its occupier. Ships or vessels under the command or charge of an officer bearing H.M. commission, or belonging to a foreign government, are, however, excluded from this section. [732]

Disinfection of Premises and Removals to Hospital, etc.—By sect. 2 of the P.H. (Ships, etc.) Act, 1885 (*d*), the above mentioned sect. 110 of the Act of 1875 was further extended by being made to apply for the purposes of certain other sections of the Act of 1875 (mentioned in the Schedule to the Act of 1885 (*e*)) as well as to the nuisance provisions of the Act of 1875 mentioned above. [733]

Notification of Infectious Disease.—By sect. 13 of the Infectious Disease (Notification) Act, 1889 (*f*), the provisions of that Act are applied to every ship, vessel or boat, as if she were a building. The section also provides for ships, etc., not within the district of a sanitary authority, as in sect. 110 of P.H.A., 1875, see *supra*. The Act does not apply to any of H.M. ships, etc., or to ships, etc., belonging to a foreign government. [734]

Housing of Workers.—As to the power of a local authority to arrange with a dock or harbour authority or company, as “a housing association” for the provision by the association of housing accommodation for their workers, see the title HOUSING. [735]

Local Marine Boards.—If the harbour forms part of a borough, the mayor is *ex officio* a member of the local marine board (*g*). These

(*u*) 26 Statutes 412.

(*a*) *Ibid.*, 414.

(*b*) Act of 1915, s. 3 (3); 18 Statutes 584.

(*c*) 13 Statutes 669.

(*d*) *Ibid.*, 806.

(*e*) These are ss. 120, 121, 124—126, 128, 131—133.

(*f*) 13 Statutes 815.

(*g*) Merchant Shipping Act, 1894, Sched. VII., para. 1; 18 Statutes 423.

boards are established by the Board of Trade in certain ports to supervise and facilitate the working of certain provisions of the Merchant Shipping Act, 1894 (*h*), as regards seamen and mariners generally, and to appoint assessors to courts of survey, etc. (*i*). Harbour authorities, as such, are not represented on these boards, which are not concerned with the management or working of the harbour. Wherever there is a marine board, the board take charge of the mercantile marine office for the registration, engagement and discharge of seamen (*k*). [736]

Restrictions on Powers.—It may be advisable to note some restrictions imposed by the P.H.As. and the Roads Improvement Act, 1925, on the powers of local authorities where harbours and docks are concerned. [737]

Building Bye-Laws.—It is the practice of the M. of H. to include in their model series of these bye-laws a clause exempting from them any building (not being a dwelling-house) belonging to a body authorised by Act or order to navigate or use any dock, harbour or basin, or to demand tolls or dues in respect of it. Nor does Part II (Streets and Buildings) of the P.H.A. Amendment Act, 1907, or any bye-laws made thereunder extend to a building (other than a dwelling-house) belonging to a harbour or dock authority (*l*). [738]

Building Line.—Buildings in harbours or docks are not exempted from the power of a local authority to require buildings, which are being rebuilt, to be set back under sect. 155 of the P.H.A., 1875 (*m*), subject to the payment of compensation, or not to be brought forward beyond the nearest buildings on either side, under sect. 3 of the P.H. (Buildings in Streets) Act, 1888 (*n*). On the other hand, if the local authority prescribe a building line under sect. 5 of the Roads Improvement Act, 1925 (*o*), the prescribed line does not extend to land belonging to or held by the owners under Parliamentary powers of a dock or harbour, except with their consent, but a consent must not be unreasonably withheld. The Minister of Transport, after consultation with the Minister of Health, decides whether a consent has been unreasonably withheld. Further as to building lines, see BUILDING AND IMPROVEMENT LINES at p. 290 of Vol. II. [739]

Culverting Streams.—The powers as to culverting or covering streams or watercourses contained in sects. 51, 52 of P.H.A., 1925 (*p*), do not extend to any culvert or covering of a stream or watercourse constructed by the owners of a dock or harbour undertaking and used for the purposes of the dock or harbour, unless the consent of such owners is obtained by the local authority (*q*). In this instance, the owners have power to refuse a consent, and the M. of H. is not authorised to decide whether the refusal is unreasonable. [740]

Drains or Sewers, Alteration of.—Drains vested in the owners, trustees or conservators, acting under Parliamentary powers, of any dock or harbour are exempt from sect. 39 of the P.H.A., 1925 (*r*), requiring any reconstruction or alteration to be supervised by the local authority and notice given to them. [741]

(*h*) Merchant Shipping Act, 1894, s. 244 (2), as amended by s. 74 (2) of the Merchant Shipping Act, 1906; 18 Statutes 250.

(*i*) *Ibid.*, s. 487 (3); 18 Statutes 348.

(*l*) Act of 1907, s. 33; 13 Statutes 923.

(*n*) *Ibid.*, 810.

(*p*) 13 Statutes 1137.

(*q*) P.H.A., 1925, s. 11; 13 Statutes 1118.

(*k*) *Ibid.*, s. 246 (2); *ibid.*, 251.

(*m*) 13 Statutes 689.

(*o*) 9 Statutes 223.

(*r*) *Ibid.*, 1132.

Gas or Water Mains in Private Streets.—Sect. 80 of the P.H.A., 1925 (*s*), allows a local authority when authorised to supply gas or water, to lay mains in private streets, but this power does not extend to any street repairable and used by a dock or harbour authority for the purposes of the dock or harbour, unless their consent is obtained. Such a consent must not be unreasonably withheld, and the M. of H. may determine whether a consent has been unreasonably withheld. [742]

Sanitary Works.—Important restrictions on the power of a local authority to lay sewers or trunk water mains, or to execute other works under the P.H.As., are contained in sects. 327—329 of P.H.A., 1875 (*t*). By sect. 327 local authorities are prohibited from interfering with any dock, harbour, lock, reservoir or basin, so as injuriously to affect its use by persons under Parliamentary powers, or from interfering with any watercourse or with any bridge crossing any such dock, harbour or basin or from executing any works in, through or under any wharves, quays, docks, harbours or basins used by persons under Parliamentary powers. In all such cases the consent of the harbour authority or other persons must be obtained.

By sect. 328, where any matters or things proposed to be done by the local authority, *and not being within the prohibition aforesaid*, interfere with the improvement of any such dock, harbour or basin, or with any works belonging to it or with land necessary for the enjoyment or improvement thereof, the local authority must give the owners a notice specifying the particulars of the matters and things so intended to be done. If the parties do not come to an agreement, the matter in difference is referred to arbitration, the result of the arbitration being final under sect. 329 of the Act.

As to the power of a harbour authority to divert sewers, etc., passing under harbour works and vested in the local authority, see *ante*, p. 298. [742A]

Smoke Nuisance.—Although sect. 23 (3) (4) of the P.H. (London) Act, 1891 (*u*), requires steam-engines and furnaces used in the working of any steam vessel on the River Thames to be constructed so as to consume their own smoke, sect. 9 of the P.H. (Smoke Abatement) Act, 1926 (*a*), provides that nothing in that Act shall apply to any ship habitually used as a sea-going ship, or affect existing enactments as to smoke nuisance and smoke consumption in any such ship, thus saving sect. 23 of the Act of 1891. [743]

Street Improvement Line.—This differs from the building line and is the line to which the local authority or county council propose to widen a street under sects. 33, 34 of P.H.A., 1925 (*b*). For a description of this power, see Vol. II, pp. 295—297. But by sect. 33 (13) nothing in the section is to apply to or affect any property vested in the owners, trustees or conservators of any dock or harbour acting under Parliamentary powers and used for the purposes of the dock or harbour, unless their consent is obtained by the local authority. A consent must not, however, be unreasonably withheld and any question whether or not a consent has been unreasonably withheld is to be determined by the M. of H.

The “purposes of the dock or harbour” in this section, would probably be held not to include cottages built for their employees by the harbour authority, following the decision that “the purposes of the

(*s*) 13 Statutes 1152.

(*u*) 11 Statutes 1040, 1041.

(*b*) *Ibid.*, 1128—1130.

(*t*) *Ibid.*, 759—761.

(*a*) 13 Statutes 1161.

undertaking" did not cover cottages built for employees by a railway company in the case of *Manchester, Sheffield and Lincolnshire Rail. Co. v. Barnsley Union (c)*. [744]

Further, as to Improvement Lines, see BUILDING AND IMPROVEMENT LINES at p. 290 of Vol. II.

London.—See title PORT OF LONDON AUTHORITY.

(c) (1892), 67 L. T. 119 ; 38 Digest 190, 280.

HAWKERS

See MARKETS AND FAIRS ; PETROLEUM.

HEALTH INSURANCE

See NATIONAL HEALTH INSURANCE.

HEALTH, MINISTRY OF

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INTRODUCTION

Scope of Article.—The powers of the Minister of Health in relation to particular subjects are set out fully in the articles dealing with those subjects. This article states in particular the practice and methods of the Ministry, on which not much has been written, and matters relating thereto likely to be of service to local representatives and officers ; and this is the course which is mainly followed in the present article, with some brief reference to origin and constitution.

The article deals only with the functions of the Ministry which concern local authorities, not with the work of health and invalidity insurance, and of old age, widows' and orphans' pensions, which are also part of its duties. [745]

Origin.—The Local Government Board was constituted in 1871. It took over the work of the Poor Law Board and certain functions relating to public health and local government previously performed by the Privy Council Office and the H.O. Many additional duties have been added in the course of the years. In 1911, the system of health and invalidity insurance was instituted, and the National Health Insurance Commission was set up to administer the system in England, with a separate commission for Wales.

In 1919 the Local Government Board, with some small shedding of functions to other departments, and the National Health Insurance Commissions for England and for Wales were merged to constitute the Ministry of Health. The name was not altogether happy, but it appealed to prevailing notions of remodelling Government departments according to subjects. The M. of H. continued to be a Ministry of Local Government no less than of health. Further, some matters relating to health remained with the H.O., the Privy Council and the Board of Education, though in close co-operation with the M. of H. [746]

Constitution.—At the head of the department is a Minister, responsible to Parliament, a member of the Cabinet and up to the present has always been a member of the House of Commons. There is also a Parliamentary Secretary, who with one exception has always been a member of the Commons. The weight of work falling on Ministers in the House of Commons is heavy, owing to the trend of legislation in recent years.

The Ministry is staffed in the ordinary Civil Service manner, with a permanent secretary at its head, and a deputy secretary. Apart from ancillary services, the staff may be divided into two broad groups—(1) the administrative, executive and clerical, and (2) the professional. The former group is recruited by examination, there being three examinations for entrance at different levels, with opportunities of promotion for proved merit from one level to the other. The latter group (the professional) is recruited by selection, care being taken to secure impartiality. The professional staff play a very important part in the work of the Ministry, where they act as advisers, decision resting—subject, of course, to the Minister—with the administrators, acting in professional matters on professional advice. The Ministry is organised in administrative divisions, with directors, principal assistant secretaries and assistant secretaries. The divisions are local government administration; housing and town and country planning; health services, foods, infectious disease prevention; the blind; general health questions and general practitioner services; establishment; and (recently constituted) intelligence and public relations. The divisions are divided into departments for the several services, each usually with a principal in charge. In addition, there is the Accountant General's Department, dealing with internal finance, including the insurance and pension funds, and grants, and there is also a department on National Health Insurance and Contributory Pensions, under a controller.

The professional staff includes the legal branch, with the legal adviser and solicitor at its head; the engineering staff, with a chief engineering inspector; the medical staff, with a chief medical officer; and the building and town and country planning technical staff, with a chief technical officer at its head, and a chief planning inspector.

Three other classes of officials should be mentioned. There are a number of general inspectors (with assistants), each allotted to a district. They are general administrators and liaison officers with local authorities. They are the successors of the assistant commissioners of 1834, and, like them, were formerly concerned almost wholly with poor law relief, being guides, philosophers and friends, occasionally correctors, of the boards of guardians, as at present of the public assistance authorities whom they are always glad to advise in matters of difficulty. They now perform other functions in addition to poor law duties.

The district auditors are appointed by the Minister of Health and are assigned by him to prescribed districts. They are subject to him for discipline, but are independent of him in the exercise of their quasi-judicial functions of allowance, disallowance and surcharge, their powers in regard to the exercise of these functions being laid down by statute. The district auditors audit the accounts of all county councils, metropolitan borough councils, urban and rural district councils, parish councils and meetings, numerous miscellaneous authorities and certain of the county borough and non-county borough councils. In the case of the remaining county and non-county borough councils, the accounts relating to rating, public assistance and education are subject to audit by the district auditors, who also, in the case of these authorities, examine on behalf of Government departments the accounts relating to certain services, *e.g.* police, in respect of which grants are made from central funds. [748]

The third class consists of the alkali inspectors, whose work extends to very much more than alkali works, their duty being to deal with the emission of noxious fumes or gases from works specially liable to this risk. They are responsible for one of the few services carried out directly by the Ministry. All inspectors are qualified chemists and this service is admittedly one of the most efficient in the country. Though the alkali inspectors have no direct connection with local authorities, they are often consulted by local officers and are always ready to be of help.

Apart from staffs engaged on insurance, the staffs of general inspectors, auditors and alkali inspectors are the only ones which are localised, each member being allotted a district, except for a few at Whitehall. For the other services, even when there are local duties such as inquiries and inspections, it is found better for allocation of work and, still more important, for providing the necessary specialised ability for the particular case, to administer the service from the centre.

There is a special Board of Health for Wales, which is dealt with under a separate head. The Registrar-General is also a principal assistant secretary and is responsible to the Minister. [749]

Subjects with which the Ministry Deal.—A detailed and exhaustive list of all the multitudinous matters with which the Ministry deals would be very long. The following is a list of the principal subjects:—

Water supplies; sewerage and sewage disposal; prevention of pollution of rivers; collection and disposal of refuse and street cleansing; prevention of atmospheric pollution, including smoke abatement; sanitary nuisances in general; privy conversion. Alteration of areas and constitution of new authorities. Housing, including slum clearance. Bye-laws relating to buildings and several other subjects. Town and country planning. Parks and open spaces and recreation grounds;

baths and washhouses; gymnasias. Town halls and other municipal buildings; markets; slaughter-houses. Private street works. Cemeteries and burial grounds. Sea defences. Appointment of medical officers of health and sanitary officers. Infectious diseases, tuberculosis, venereal diseases; vaccination; hospitals; health visiting; foods and drugs; port sanitation; international health work. Maternity and child welfare. Registration of nursing homes. Surveys of public health services. Poor relief. Welfare of the blind. Lunacy and mental deficiency (through Board of Control). Superannuation and compensation of local government officers. Finance: sanctioning of loans; stock issues; financial returns; repayment of loans; audit and audit appeals; grants to local authorities. Legislation, including reports to Parliament on private bills; provisional orders; grants of powers to local authorities. In connection with other departments, principally in the sanctioning of loans: roads (with M. of T.); schools and libraries (Board of Education); police stations, fire stations and court premises (H.O.); allotments and small holdings (M. of A. & F.); gas works of local authorities (Board of Trade). [750]

METHODS AND PRACTICE

Correspondence.—Most of the business of the Ministry with local authorities is necessarily conducted by correspondence. Official correspondence is always addressed to the Town Clerk, or in cases other than Cities and Boroughs, the clerk of the authority and should come from him. Likewise official communications to the Ministry should always be addressed to the secretary. This does not preclude semi-official or informal communications between other central and local officers; indeed, this is often a useful way of removing doubts and difficulties or of clearing the way for the formal official communication, often making for more thorough understanding on both sides of difficult matters and for expedition.

It is not the practice of the Ministry to communicate with committees on matters which must come before the council for decision. It would be wrong at that stage to express any opinion on proposals, and thus possibly to prejudice the decision of the Council. An officer can usually ascertain whether in principle a proposal is likely to meet with difficulties at the Ministry, should the matter come officially before them. Similarly the Ministry refuse to advise an individual councillor on any matter which is before, or may come before, his council. The position would become impossible if any other attitude were adopted. Any advice or information desired from the Ministry should be obtained through the council.

Much time is saved if all the necessary particulars are supplied when an application is made to the Ministry, for instance, to sanction a loan. Forms are provided for the supply of information for some classes of cases, for example sewerage works. If there is any doubt as to what particulars are required or whether there is a set form for providing them, it is well to ascertain this from the Ministry at the outset, which can be done quite informally. It is also well that attention should be drawn to any exceptional features connected with the application which may need to be specially considered, such as a difficulty with another authority or with private interests or an exceptional problem in connection with works. The more concisely proposals are put, in plain English, the better they will be understood and the more quickly decided.

The Ministry are always glad to consider in outline any proposals which may involve difficulty, before they are worked out in detail. Much time and trouble may be saved, and many other advantages gained, from adopting this course. Cases have occurred where proposals for works have been prepared in detail and have had to be abandoned because they are of a kind to which the Ministry cannot agree. The outlines should have been definitely worked out before the Ministry was approached, and the fundamental data ascertained. The Ministry cannot undertake, for example, to prepare a scheme of works for a local authority, as they cannot be expected to act as consulting engineers.

Of recent years the Ministry in their annual reports have given samples of decisions on particular issues which have come before them, in town and country planning and on private street works, for instance, and local authorities and their officers will find these decided cases of much service in their work. [751]

Conferences.—While most business must be done by correspondence, a great deal is done by conference and by deputation. Sometimes there is too ready a tendency to send deputations, when correspondence would be sufficient, and for too large deputations when they are sent. Two or three councillors with the responsible officer usually should be enough even for important cases. The occasions on which more are required should not be frequent, although occasions do occur. In many cases, especially when the matter at issue is wholly or primarily technical, the officer alone is sufficient.

At the same time, conferences, whether with a deputation or with the officer, often make both for expedition and economy, and in such cases the Ministry are always willing to arrange for them. Furthermore, personal touch between Ministry and councillors, as well as between officers, helps administration, and this reason alone sufficiently justifies occasional conferences. Business by correspondence alone, especially when the correspondence has to preserve a measure of formality which shuts out the personal touch, is apt to become mechanical. Official business at any rate is facilitated if local councillor or officer feels that the official at the other end is no less human than himself.

Needless to say definite appointments should be fixed for conferences or deputations. Further, the matters to be discussed and any particular difficulties should be adequately stated beforehand. They can then be considered at the Ministry before the conference, and previous records looked up, if necessary, and the discussion thus rendered of more service. [752]

Circulars.—The number of circular letters from the Ministry to local authorities in the course of a year is large, but this is because of the wide range of the Ministry's functions and of modern problems and the fluidity of modern conditions. In recent years use has been made of the local government press, including the publications of the service associations of local authorities, for bringing matters to the notice of local authorities and their officers.

The principal purpose of circular letters (apart from those asking for returns, for instance), is to explain, to guide or to exhort. It is the practice, for example, when a new Act of Parliament is passed touching the work of local authorities, to give a brief summary of the

powers of the Act, with probably some suggestions on its administration. The summary is useful to the officer in providing a concise statement of the provisions of the Act, though for administration it is of course necessary to refer to the Act itself. It should be more useful still to councillors, more especially members of the relevant committee, who may need to know the general scope of the Act but may rightly lean on the officer for details, and also to other interested laymen.

The advice and suggestions contained in circular letters merit close attention. They are the result of careful consideration, with a wealth of experience behind them drawn from all over the country, experience of local as well as of central administrators. [753]

Inquiries.—Many applications made to the Ministry cannot be decided without a local inquiry. In some cases the inquiry is required by statute. Where this is so, it is the increasing practice of Parliament to provide that the inquiry must be held only if an objection is made, which is not based solely on the amount of compensation, for settling which there is other provision.

Apart from statutory obligation, an inquiry is usually now held only when the application is in itself of much importance, or when it is the subject of much controversy, or when private interests may be so seriously affected that they ought to be given an opportunity of a hearing. Sometimes an inquiry may be avoided by advertising the proposal and ascertaining that there is no objection; but this course should be adopted only after consultation with the Ministry.

At other times where a case cannot be settled by correspondence, it is usually found sufficient to have a conference with the responsible officer or consulting engineer or to arrange for a visit of inspection, without an inquiry. In some cases also, when the interests affected are very limited, as in some planning appeals, it may be enough to hold a local investigation, not a public inquiry, care being taken to notify all parties affected so that they may attend and be heard. Local authorities and their officers can often smooth over difficulties by themselves hearing objecting parties and meeting them so far as is reasonably practicable.

Most of the inquiries are held by engineering inspectors because they relate to public works. Engineering inspectors gain such a wide experience of local inquiries and have to deal, in connection with public works, with such a wide range of local government problems, that they are often used also for other than engineering inquiries, though questions of engineering of one kind or another enter incidentally into most even of these. Many inquiries also are held by housing inspectors and by planning inspectors, and a number by medical officers, with or without a colleague of another profession. Occasionally an inquiry may be held for special reasons by a person who is not an official of the Ministry.

The Ministry are sometimes asked to hold an inquiry into the general conduct of a local authority or possibly of a member or members of the local authority on general allegations. The Minister has no power to direct an inquiry unless he is expressly authorised by Statute. An inquiry in a case of this kind is not likely to prove useful unless the inspector has definite powers to call for evidence if need be, even though he seldom requires to use the powers. Experience also shows that inquiries of a "fishing" nature on general statements, without specific

charges with good *prima facie* grounds, are likely to prove unsatisfactory. There is another consideration; the primary responsibility for good local government is on the local authority of the area, and nothing could be more disastrous for local government than to weaken that responsibility. It is well to remember that the audit of accounts may be a satisfactory means of dealing with some cases.

The procedure at local inquiries generally follows that of the courts, though not so strict in admitting or excluding evidence. Most of the inquiries are of an administrative character and, while they must be held and questions be considered in a judicial spirit, they are different in some respect from hearings at law. One object is to permit any local inhabitant to be heard, if he desires, and reasonable latitude must be allowed. Inspectors holding inquiries are directed to help, where necessary, the unlearned with something relevant to say, to bring out their point. When an inquiry is held under statutory authority the inspector has certain powers to compel the attendance of witnesses. He may also require evidence to be given on oath, though this is rarely necessary.

At most of the inquiries the parties are not legally represented; the issues are comparatively simple, although difficult questions of administration or of technique may occur, and no legal issues arise. Parties are often represented, however, by barrister or solicitor, at the important inquiries, especially when very controversial, such as those on alterations of boundaries.

Points of law occasionally arise at inquiries which are sometimes difficult. Many simple points on procedure can be disposed of by the inspector from his own experience or from instructions issued by headquarters. If parties would advise the Ministry or the inspector before the inquiry starts of points of law which may be raised, there would then be opportunity of consulting the legal advisers of the Ministry for the information of the inspector. When points are raised of which the inspector cannot dispose, he reserves them for reference to the Ministry and their legal advisers, adjourning the inquiry if that should be necessary until a decision is given on them, but such an adjournment is of rare occurrence. The inquiries are very few, however, at which points of law arise with which the inspector cannot deal at once. [754]

Appeals.—There are many cases where the Minister has to decide appeals from the decision of local authorities, especially in town and country planning and on private street works.

The kind of issues which arise on appeals are not essentially different from those which may arise on numerous applications from local authorities. There is no essential difference, except in form, between deciding, for instance, an appeal from a refusal of a local authority to permit a proposed interim development, and deciding on a draft planning scheme whether or not a particular class of development is to be permitted in a specified district. Or, to give another illustration, the Minister has to decide an issue in the nature of an appeal when he has to weigh public and private interests where a local authority propose to place a sewage disposal works in an area and private persons object on the ground that they will be seriously prejudiced.

Where appeal lies to the Minister the matters are usually ones in which Parliament has not found it practicable to lay down a clear line between what may and what may not be permitted and decision

depends in some measure on policy ; usually also they are issues of a technical nature, needing specialist advice. There are, of course, many cases where appeal from the decision of a local authority lies to the justices ; and there is no clear principle running through Acts of Parliament distinguishing these cases from those where appeal lies to the Minister. Much depends on the temper of the time when the Act was passed, nor can it be said that any definite trend one way or the other is indicated in recent legislation. It may be said that the more technical the probable issue—and issues tend to become more technical—the stronger will probably be the desire for a tribunal with technical advice at its disposal.

Some Acts provide that specified classes of disputes may be referred to the Minister for decision, if both parties agree. In some other cases the Minister may be prepared to act if both parties so request, and agree to abide by his decision. For instance, the Minister is sometimes asked by private persons to decide whether or not a proposed building complies with the local bye-laws. He has no power to give an authoritative decision ; but he is prepared to state his opinion if both sides agree to abide by it. The Departmental Committee on Building Bye-laws recommended in their report of 1918 that the Minister should have power to give conclusive decisions.

Complaints are sometimes made because the reports of inquiries are not published, particularly in cases of appeals. The inspector is the agent of the Minister ; he makes a confidential report to him ; responsibility for the decision rests with the Minister, and he is in turn responsible to Parliament for his actions as Minister.

The reports of inspectors are considered with great care. It does not necessarily follow that the recommendations are always adopted, but they are not departed from except for adequate reasons, and then only after full discussion with the inspector where necessary. It might possibly be alleged against Government departments not that they decide lightly, but rather that they decide with too heavy a weight of care and consideration, and that the sense of responsibility, with the ever present sword of a possible question or discussion in Parliament, bears too heavily upon them. But this, if a fault, will generally be agreed to be a fault in the right direction.

A special form of appellate jurisdiction is that given to the Minister from the decisions of district auditors, appointed under the provisions of the District Auditors Act, 1879, now replaced by Part X. of L.G.A., 1933 ; the Minister has no similar jurisdiction in other forms of local audit. As to details of the powers of the Minister in relation to appeals *see* the title *AUDIT*, but mention may here be made of five outstanding features : (1) appeal may be made not only in respect of a disallowance or surcharge but also against the allowance of a payment by the district auditor ; (2) the Minister may decide on appeal whether the auditors' decision is legal, and the Minister's decision is final ; (3) in addition to, or in place of, an appeal, an application may be made to the Minister for relief from the personal liability attaching to a surcharge, and the Minister may remit the surcharge if satisfied that there is proper ground for doing so ; (4) where the sum in question is over £500, any appeal lies to the High Court, a change effected in 1927 the better to deal with grave cases ; and (5) in cases of less amount appeal may be made to the High Court instead of to the Minister, at the option of the appellant, but he must abide by his choice. Most of the appeals to the Minister can be, and are, dealt with by correspondence, but local investigation

or public inquiry is held where necessary, and an appellant or applicant is entitled, if he so desires, to a personal hearing by a person appointed by the Minister.

An instructive instance of the British spirit of compromise is the power given to the Minister by the proviso to sect. 228 (1) of L.G.A., 1933, to sanction expenditure which is not authorised by law. The sanction does not make the expenditure legal, but it removes the power of the district auditor to disallow it. This power to sanction is a useful means of meeting exceptional cases where it is reasonable that the proposed expenditure should be incurred. [755]

Associations of Local Authorities and of Officers.—A marked development of recent years has been the closer co-operation between the M. of H. and the associations of local authorities. It has become the practice to consult the several associations of authorities on any important matters of policy affecting their members, indeed so much so that the associations are coming to regard this right of consultation as part of the unwritten constitution. Frequent consultation also takes place on lesser matters. When a local authority desire to bring forward an important matter of policy or practice of general application, it is well that the matter should first be brought before their association, who can consider its merits from the general standpoint and press a proposal before the powers that be, if it finds favour with them.

In recent years, too, there has been much closer touch between the Ministry and the organisations of officers, such as those of county clerks, town clerks, medical officers of health, treasurers, engineers and surveyors, to mention a few. To give three illustrations among several examples: when model standing orders were drawn up recently, the Society of Town Clerks was consulted, the latest orders of accounts, which were drawn up on new lines, were prepared in consultation with the Institute of Municipal Treasurers, and the costing returns for the collection and disposal of refuse and for street cleansing were prepared by an informal committee containing representatives of the Institution of Municipal and County Engineers, the Institute of Public Cleansing and the Institute of Municipal Treasurers, as well as of the Ministry. Frank interchange of views between central and local officers can be of invaluable service, in matters big and small.

All this intimate co-operation and the closer relations with individual authorities and their officers which have taken place in recent years is typical of the spirit that the position of the Ministry is not that of master but of a partner with local authorities in the work of local government, and that the Ministry cannot carry out their own particular functions to the best purpose except in close co-operation with local authorities and their officers.

The work of the Ministry touches many well-organised interests and consultation takes place with bodies representing those interests, such as the British Medical Association and the Institution of Chartered Surveyors, the Federation of British Industries, and the associations of Water Undertakers, to mention just a few. In the growing complexity of government, outside associations of standing representing important interests tend to become an informal part, sometimes a formal part, of governmental organisation.

Numerous conferences are held on matters of local government, but more co-ordination would be advantageous. The payment of expenses in connection with some conferences is authorised by statute

or by regulations. In other cases sanction can be given only under sect. 228 (1) (proviso) of the L.G.A., 1933 (formerly the Local Authorities (Expenses) Act, 1887), the effect of sanction being, as previously stated, only to remove the expenditure from the jurisdiction of the district auditor. It is now the practice of the Ministry, when sanction of this kind is given, to convey it in general terms to the body convening the conference, thus obviating the need for individual application from each authority proposing to send representatives. [756]

Consultative and Advisory Committees.—In addition to the liberal consultation with organised bodies there are standing consultative or advisory committees for many subjects such as Public Health, Nutrition, Water Supplies, Welfare of the Blind, Valuation (Central Valuation Committee), Town and Country Planning, Cost of Building Materials; sects. 24 and 25 of the Housing Act, 1935, provide for two committees of this kind on housing. There are also standing committees for the survey of inland water resources and for the prevention of pollution, the former appointed to supervise the work of survey and to report annually on it, the latter to consider questions which may be submitted to them from time to time.

Consultative and advisory committees are useful for bringing together outside opinion when a large number of different interests are concerned. They then serve as a means of ascertaining the views of those interests and of obtaining proposals, of giving contemplated proposals a trial, and of explaining and reconciling divergent views in discussion round a table. [757]

Local Legislation.—Local legislation plays an important part in local government and in many matters has been the pioneer of general law. Local authorities are properly jealous of their right of direct access to Parliament. Parliamentary committees are jealous of anything which may appear dictative by Government departments. The latter have, therefore, to steer a delicate course.

The consent of the Minister is required to the promotion of a Bill by a local authority. He ascertains whether the required formalities have been carried out and, where there has been failure too late to remedy, calls the attention of Parliament to it, so that dispensation may be granted if thought fit.

The Ministry are glad to advise local authorities who are contemplating promoting Bills on particular proposals, and they are often able to make useful suggestions from their wide experience. They are prepared to help in composing disputes between authorities and thus not only save the large sums of money sometimes spent on them, but also promote better local feeling; the Ministry have been very successful peace-makers in recent years. Local authorities would do well to confer with the Ministry at an early stage when they contemplate legislation; they will not be prejudiced and they may be much helped.

The Ministry present reports to Parliament on proposals in Bills which call for comment. These reports are not *ex parte* statements, but are in the nature of information and suggestions to the committees. The same attitude is adopted by representatives of the Ministry who attend meetings of committees, and it is their business, when requested, to state facts and views impartially, those which may be against some suggestion made by the Ministry as well as those for it. Many matters

may be settled by conference with the Ministry after, as well as before, a Bill has been introduced, and conferences are welcomed.

In the case of provisional orders, a public inquiry has usually to be held by statute before an order can be made. Most orders pass through Parliament without opposition, with much consequent saving of time and money. Provisional orders are closely examined in Parliament even if unopposed.

It is not the practice for officials of the Ministry to give evidence either on private or provisional order Bills, but this has occasionally been done in special cases at the request of the committee. [758]

Publications.—An annual report is issued by the Ministry dealing with all branches of their work. It is a publication which contains a wealth of information on the multitude of subjects within the scope of the Ministry, the very multitude possibly causing the report to be less read than might otherwise be the case. The parts of the report dealing with housing and town and country planning, with public cleansing (the collection and disposal of refuse and street cleansing) and with the Sale of Food and Drugs Acts, are published separately, some time after the annual report, with some additions in the case of public cleansing. A separate annual report is published by the chief medical officer. These annual reports should be in constant use by every local authority. They are invaluable guides as to policy as well as stores of detailed information. The following other periodical publications are issued :

Reports of the Central Valuation Committee and the Advisory Committee on the Welfare of the Blind; Annual Report of the Chief Alkali Inspector with also the Report of the Chief Inspector for Scotland; Costing Returns on Hospitals, Poor Law Institutions and Poor Law Children's Homes; Comparative Local Financial Statistics for Different Classes of Local Authorities and a Return showing Rates in the Pound and Assessable Values; Annual and Quarterly Returns of Persons in Receipt of Poor Relief; Half-yearly Housing Statistics.

Some memoranda on matters which frequently form the subject of correspondence have been prepared, most of them primarily for departmental use, but available for officers of local authorities on request. Among the subjects are approval of plans for new streets and buildings; temporary buildings; private street works; sanitary requirements for burial grounds; and encampments of caravans and similar dwellings. [759]

General Responsibility.—There is a widespread impression, not confined to private persons, that the Minister of Health has a general and detailed responsibility for the good or ill of local government in general, and that he possesses powers of dictatorial scope, if he chooses to use them. This is a mistake. He has only such powers as are expressly conferred upon him by statute. For the administration of relief these powers are wide, dating from the strong centralising movement of 1834, though even here he is expressly prohibited from ordering relief in any individual case. In other spheres they are narrower, though wide for certain purposes. Thus the Minister may default an authority which fails to carry out its duties in respect of water supplies or sewerage or sewage disposal and, in the case of county borough councils, arrange for the carrying out of the necessary works, or in the case

of other authorities, transfer the duty to the county council. He may reduce the block grant payable to an authority if the authority has failed to carry out any of its duties relating to public health, reporting his action to Parliament. But he may act only to the extent and in the particular direction expressly authorised by Parliament.

In practice, however, the Minister's activities cannot but be extensive. Public and Press, and, through questions and debates, Parliament itself expect him to play the part of *deus ex machina* in times of trouble, whether of drought or flood, or any of the many other emergencies which may arise. Local authorities generally recognise the practical position and co-operate, the more willingly, of course, if the Minister comes to help, not to correct. At the same time every endeavour is made not to weaken the responsibility of the local authority, and to make it clear to the general public where the responsibility lies. [760]

RECENT TENDENCIES

A brief indication of trends during the present century, without in any way touching on merits, is instructive.

The outstanding trend is the vast extension of local government, indicated, for example, by the rise of expenditure which for all purposes (including capital) and from all sources was £110 millions in 1900-1 and £507 millions in 1932-3, or, per head of population, £3 8s. and £12 12s. (Account has to be taken, of course, of the changed value of money.)

Local authorities have been consolidated. School Boards and Boards of Guardians have disappeared, and consolidation, the trend of many years, has been practically achieved. But even before this phase of development is complete, *ad hoc* bodies for specific purposes are again being created, with the London Passenger Transport Board as one of the latest instances. Issues of this kind are never settled for long where conditions are changeable.

Among classes of local authorities, the most noteworthy feature is the growth in the functions of county councils. When county government was made democratic, a body was provided suitable for the increasing number of duties for which it was considered that a large unit area was required, especially because of the growth of communications. Some hold that still larger units are desirable and that more services should be rendered directly by the State. The establishment of national employment exchanges, in the first decade of the century, has now been followed in the third by the national Unemployment Assistance Board, for dealing with the able-bodied unemployed in need.

For the first time since all the many years of local government, a systematic review has been made of the areas of local authorities, but not (except as incidental to the review of county districts) of counties or of county boroughs.

In the personnel of members of councils, one of the most striking developments is the coming of Labour members, now forming a majority in many councils, and, in the case of officers, in addition to the growth of staff because of growth of work, the higher qualifications required, to the fulfilment of which the organisations of the officers themselves have notably contributed.

Relations between central and local authorities have become closer and more friendly. The associations of local authorities have become much more influential and now claim to be consulted on central proposals of importance touching their interests. Central departments depend more on knowledge and influence than weight of authority.

A comparison between 1900 and 1935 would reveal some outstanding developments. For instance, the large proportion of local expenditure now provided out of central funds—in 1900–1, 23 per cent. (£12·7 m.) of the total expenditure met out of rates and grants; in 1932–3, 45 per cent. (£120·5 m.). Measures have been passed, and applied in part, for paying a substantial part of the total grant according to local need, though a large proportion of the central grants (47 per cent. of the whole in 1932–3) is still paid as a percentage of expenditure on particular services. Relief of agricultural land from rates, which started many years ago at a half, has now been extended to the whole, while large relief has also been provided for industrial establishments. The income of local authorities from rates has thus been reduced, but the loss has been more than replaced by central funds.

Of the several functions, one of the most ancient has been greatly changed, and the break-up of the poor law is proceeding. Services to the poor which can be rendered under other powers, particularly of public health or education, are being so rendered in many places. Under the poor law itself, relief is being more liberally afforded. Other large provision or assistance is being afforded outside the poor law, wholly from State funds, for old age pensions for persons over seventy years of age, and for maintenance of the able-bodied unemployed who have fallen out of insurance, and by liberal State aid to insurance for the unemployed, and for the sick and invalid and for widows, orphans and the aged, a veritable revolution of which the harvest is still to be reaped.

Public health functions have been far extended, in particular to personal hygiene in maternity and child welfare, in care of school-children, in prevention and treatment of tuberculosis and of venereal diseases; at the same time the services of sanitary engineering, still the foundation of public health, have been greatly improved, including water supplies. For the first time systematic measures have been taken for the mentally deficient, a matter both of public health and of care for the poor.

Highways have undergone a transformation. In the first decade a Road Board was formed for stimulating new roads and improvements. Later came the M. of T. A large road fund was formed out of various motor taxes, and out of this fund liberal grants have been made for new construction, improvements and maintenance. Meantime, the struggle still continues for reconciling speed with life and public improvements with amenities.

In education expansion has gone on apace, a total expenditure of £11·7 m. in 1900–1 having reached £88·6 m. in 1932–3. With roads and police, it is among the principal services for which percentage grants are still given.

No service shows a greater change than housing. The new spirit had started in the first decade, but the real effort in this direction came from and after the War. The provision of new houses, either with or without financial or other aid from the State or from local authorities, has been enormous, while now a vigorous campaign is afoot for removing

slums, with a coming campaign to deal with overcrowding. We are in process of consummating measures started in the 1860's and, until the 1920's, tardily pursued. [761]

HEALTH RESORTS

See ADVERTISING BY LOCAL AUTHORITIES.

HEALTH VISITORS

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See also title : MATERNITY AND CHILD WELFARE.

Appointment.—Every county council outside London, every borough council and every council of an urban or rural district may appoint health visitors (*a*), but they are seldom appointed by the smaller towns and rural districts as county schemes usually operate in these areas. An express power of appointing health visitors is not given by sect. 1 of the Act of 1918, and the appointments are made under the general power of making arrangements, subject to the sanction of the Minister of Health, which is given by the section. Before 1930, the appointments were subject to the approval of the Minister, but following the passing of the L.G.A., 1929, the Minister gave a general approval to this service (*b*), if it had already been provided by a council with his approval, and sanctioned such extension of service as the council might think desirable. Many health visitors, both whole-time and part-time, are appointed by voluntary associations engaged in child welfare work, and when grants are made to these associations for maternity and child welfare assistance by local authorities, it would seem that the health visitors, if salaried, should be qualified in accordance with the regulations, but that district nurses acting as part-time health visitors need not be so qualified (*c*). [762]

(*a*) Maternity and Child Welfare Act, 1918, s. 1 : 11 Statutes 742.

(*b*) M. of H. Circular, No. 1072, printed on p. 3540 of Lumley's Public Health, 10th ed.

(*c*) M. of H. Circular, No. 557.

Qualification.—The appointment of health visitors is of comparatively recent origin, and the first express reference in an Act to health visitors occurs in sect. 6 of the L.C.C. (General Powers) Act, 1908 (*d*). Although that section allowed the Local Government Board (now the M. of H.) to prescribe the qualification of health visitors, at that time there were no women specially trained and qualifications of varying standards were accepted. But a similar power was conferred by sect. 59 of L.G.A., 1929 (*e*), and more uniform standards have been defined by the Local Government (Qualifications of Medical Officers and Health Visitors) Regulations, 1930 (*f*), as amended in 1933 (*g*). By these Regulations a health visitor must be a woman (1) who, before April 1, 1930, has, with the approval of the Minister, held the appointment of health visitor, or (2) who possesses the health visitors' certificate issued by the Royal Sanitary Institute under conditions approved by the Minister, or (3) who holds the diploma issued under the Board of Education (Health Visitors' Training) Regulations, 1919, or (4) the health visitors' certificate issued by the Royal Sanitary Association of Scotland, under conditions approved by the Department of Health for Scotland, and duly endorsed by the Association as rendering the holder eligible for appointment as a whole-time health visitor in England and Wales as well as in Scotland. [763]

Some councils stipulate that their women public health officers should undertake health visiting, infant life protection, school medical work, tuberculosis visiting and sometimes work under the Mental Deficiency Acts and Blind Persons Act. By the same regulations, a less wide qualification is required for the appointment of a tuberculosis visitor. [764]

The Minister reserves a discretionary authority to dispense with the requirements of the regulations of 1930 and 1933, provided that the interests of any person are not prejudiced. Under certain conditions grants are made by the Minister for the training of health visitors (*h*). [765]

Duties.—Health visitors were appointed, in the phraseology of sect. 6 of the L.C.C. (General Powers) Act, 1908 (*i*), as "suitable women . . . for the purpose of giving to persons advice as to the nurture, care and management of young children and the promotion of cleanliness and discharging such other duties (if any) as may be assigned to them." The duties of health visitors have now increased, particularly in those districts where they visit not only in connection with maternity and child welfare, but also with other branches of the council's health scheme, such as tuberculosis or the school medical service. Their duties may be divided into four categories: (1) District; (2) Welfare Centre or Clinic; (3) Office; and (4) Miscellaneous. In their district work, they carry out the routine visiting of children from birth to five years of age, home visits to expectant mothers, investigations into still-births and into the deaths of children under five years of age. They visit also in connection with infectious disease, and, in particular, such diseases as

(*d*) 11 Statutes 1290.

(*e*) 10 Statutes 924.

(*f*) S.R. & O., 1930, No. 69, printed at p. 3624 of Lumley's Public Health, 10th ed.

(*g*) By S.R. & O., 1933, No. 408.

(*h*) M. of H. Memo, 101/M.C.W.

(*i*) 11 Statutes 1290.

affect children under five years of age, *e.g.* ophthalmia neonatorum, measles, whooping cough, anterior poliomyelitis and pneumonia. They make preliminary inquiries into cases of puerperal pyrexia and puerperal fever. They are also responsible for supervising home-helps (*k*) when such are appointed by local authorities, and "follow up" children found at medical inspections to require treatment, or to be kept under observation. In certain areas they are required to report on cases of scarlet fever, diphtheria and other infectious diseases, and they undertake other visiting such as that required in infant life protection, or by school children, mentally deficient children, or persons suffering from tuberculosis. [766]

At the welfare centres they are in attendance during ante-natal and post-natal clinics, during infant and toddlers' consultations, and occasionally they may be on duty at dental clinics, sunlight clinics and diphtheria immunisation or Schick testing clinics. It is customary for health visitors to attend the welfare centres serving their visiting district, but in some areas nurses are appointed for health centre work only. [767]

In the office they are responsible for keeping records of work done, and they submit periodical reports to their immediate supervising officer—but in rural areas much of this work may have to be done at home, the health visitor only visiting the head office when required. [768]

As miscellaneous duties, health visitors may be asked to carry out by the council investigations into the financial and social circumstances of families applying for assistance under the maternity and child welfare or other health schemes; or to give demonstrations in mothercraft and cookery, or health lectures to mothers at centres and at the meeting-places of outside organisations. As officers of voluntary associations, they attend committee meetings of such bodies. [769]

The practice with regard to combined appointments varies in different parts of the country. Probably the commonest combination is that of health visitor and infant life protection visitor, and it is the view of the M. of H. that this combined appointment should be made wherever possible (*l*). In infant life protection work, health visitors must have regard to the general suitability of a house for the reception of a foster child, not only as to the accommodation available for sleeping and recreation, but also as to the general sanitary environment of the home, the economic circumstances of the family and the personality of the foster mother. They must see that every foster child is notified to the local authority, and investigations will be necessary where an evasion of the law is suspected. They will endeavour to ensure that all foster children under five years of age attend the nearest welfare centre, and they will keep the records in connection with this work. [770]

Possibly the next most common combination is that of health visitor and school nurse. School nurses on the district will follow up all cases requiring medical supervision or treatment and will take the necessary steps for securing the cleanliness of verminous children. They will be in attendance at schools when the school medical officer makes his inspections, and will assist by weighing and measuring children, or

(*k*) Home-helps are women who may be appointed by a local authority to carry out domestic work in households which are deprived of the services of the housewife, owing to her confinement, or in which there is sickness. They are not qualified nurses or midwives, who, of course, undertake no cooking or other domestic duties.

(*l*) M. of H. Circular, M. & C.W. 4.

by testing sight and hearing. At other times, they will pay routine visits to secure the personal hygiene of school children, and on these occasions their attention may be drawn to children who require special medical examination; and they will take the opportunity of ascertaining whether treatment ordered, *e.g.* the wearing of glasses, is being observed. They may also be required to report on the sanitary arrangements at schools. At the school clinics, they will prepare the children for examination by the medical officer and will carry out minor treatment. In the office they will keep records of their work on the district.

[771]

Health visitors sometimes act as infectious disease visitors. When making these visits they are required to investigate the sources of infection, to ascertain the names and occupations of contacts, and to give advice as to the steps which should be taken to prevent the spread of infection or to limit its severity in secondary cases. They may also be required to take swabs of diphtheria contacts. [772]

Less commonly the health visitors may act as tuberculosis visitors for their areas, in which case their duties will include attendance at tuberculosis dispensaries and the visiting of homes of persons suffering from tuberculosis, for the purpose of giving advice as to the care and hygiene of such persons and their families and as to the measures necessary to prevent the spread of infection. [773]

It is desirable that health visitors should, as far as possible, undertake all public health nursing in the district for which they are responsible, and certificated health visitors are trained to carry out all these various duties. The converse does not necessarily hold good, and if persons with limited qualifications are appointed to special offices—such as school nurses or tuberculosis visitors—it will not be possible to bring about such a combination of offices. It is desirable that only women who hold a health visitor's qualification should be appointed as women health officers. [774]

London.—Health visitors are appointed in London by each metropolitan borough council and the Common Council of the City of London under sect. 6 of the L.C.C. (General Powers) Act, 1908 (*m*). The M. of H. may also make regulations prescribing the qualifications, mode of appointment, duties, salary and tenure of office of health visitors. The regulations now in force as to qualification are set out *ante*, on p. 329. The county council are authorised to pay out of the county fund contributions towards the salaries of such visitors, not exceeding in any one case half the salary. In 1932 there were 196 women health visitors appointed by the metropolitan borough councils, eight part-time women health visitors and seventeen persons who carried out the duties both of sanitary inspectors and health visitors. [775]

HEATH AND FOREST FIRES

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See also titles : COMMONS ;
FIRE PROTECTION ;
FORESTRY ;
HYDRANTS.

INTRODUCTORY

Commons, forests, heaths, moors and other large unenclosed tracts of land are for brevity referred to collectively in this title as "unenclosed spaces" (a). Unenclosed spaces and the vegetation thereon are in a strict legal sense "property"; and as such are as directly the concern of the person, corporation or body who can exercise the rights and must perform the obligations of ownership, as is enclosed land. Subsidiary rights over such lands often exist for the benefit of parishioners, but in general the owner or person having direct powers of managing property is responsible for seeing that steps are taken to protect that property from an outbreak of fire, and to extinguish a fire when it occurs. The fact that a space is unenclosed and open does not alter this position. If a local authority are the owners of an unenclosed space or possess powers of management over it, they have the same powers and duties regarding fire as any other land owner, but if an authority are not the owners and have no right of management, they have little power to prevent and control fires on unenclosed spaces except in their capacity of a fire brigade or police authority (b). In such an instance they have no power, without the permission or request of the owner or person with rights of management, to enter an unenclosed space either to prevent an outbreak of or to extinguish a fire. Nevertheless local authorities are concerned in the prevention of fires on unenclosed spaces, not in exercise of a statutory duty, but in connection

(a) The nature and characteristics of the various unenclosed spaces and rights relating thereto are explained and discussed under the appropriate titles in this work and in Halsbury's Laws of England; and reference should also be made to Hunter's "Open Spaces, Footpaths and Rights of Way," 2nd ed., 1902, and to Stroud's Judicial Dictionary.

(b) For the general law relating to Fire Brigades, see title FIRE PROTECTION, *ante*. See also title HYDRANTS, *post*.

with the preservation of the amenities of beauty spots and areas for recreation. [776]

Numerous statutes (c) contain provisions for giving various powers of control over unenclosed spaces to borough, district or parish councils, whilst leaving the legal ownership of the lands in the lords of the manor or other landowners, and under many of such statutes the councils may make bye-laws for regulating unenclosed spaces.

The duty of preserving unenclosed spaces from fire is considered burdensome by many owners who are less interested in protecting such spaces than are the general inhabitants. To such owners it is a convenience to place an unenclosed space under the management of a council having power to preserve them from disfigurement. Local authorities may, and do, control considerable areas of unenclosed spaces either as owners, or as managers under a scheme of regulation, and their organisation is often of service to certain central bodies such as the Commissioners of Crown Lands, the War Office and the Forestry Commissioners. For this reason and the more general one of preserving amenities the question of dealing with outbreaks of common and forest fires is one of real importance to great numbers of local authorities. [777]

GENERAL CAUSES OF FIRES. PREVENTIVE MEASURES

In districts where there are large areas of unenclosed spaces, the danger of fire is an ever increasing one, and both the number of individual fires and the extent of damage done has in past years steadily increased. An inquiry into the causes of the increase will serve to indicate the lines of the remedies. Apart from uncontrollable causes such as an exceptionally dry summer, the principal causes appear to be two, namely: (1) the reduction in the exercise of commonable rights of grazing and of cutting grass, bracken, gorse, etc., upon unenclosed spaces, which has resulted in great quantities of such vegetation being left to wither and grow inflammable; and (2) the increased facilities for travel which have brought many thoughtless or careless excursionists into what were formerly thinly populated tracts of land. Many recent fires have been traced to the latter cause. [778]

Local authorities are helpless to reduce the operation of cause (1), unless they themselves are the owners or have powers of control over the unenclosed spaces. As respects cause (2), the only effective remedy is the education of children in schools, or through such organisations as the Boy Scouts and the Girl Guides, and of adults by propaganda. Unfortunately the local authorities in whose areas the danger of fire is most serious are usually not the local authorities in whose areas most of the people frequenting the unenclosed spaces reside. As to children, this difficulty may be overcome by any council whose area comprises an unenclosed space co-operating for that purpose with the local education authority concerned. As to adults, the display of posters containing warnings and exhortations, and close liaison with touring associations of all kinds are suggested, but it is doubtful whether a borough, district or parish council could legally pay the expenses of

(c) See Commons Acts, 1876 and 1899; 2 Statutes 579, 607; Metropolitan Commons Acts, 1866 to 1898; 2 Statutes 567 *et seq.*; Law of Property Act, 1925, ss. 193, 194; 15 Statutes 371, 378; and Inclosure Acts, 1845 to 1882; 2 Statutes 443 *et seq.* See also Corp'n. of London (Open Spaces) Act, 1878 (41 & 42 Vict. c. cxxvii.), s. 4.

printing or displaying posters. Notwithstanding the recommendation of the Select Committee on Commons of 1913, general legislation has yet to be passed to enable all local authorities to take steps necessary to prevent and control fires occurring on unenclosed spaces which they neither own nor manage.

The Executive Council of the County Councils Association passed the following resolution on March 27, 1935: "That the Government be urged to institute, in consultation with the various bodies concerned, an inquiry into the whole question of the most effective measures for the protection of heaths, commons and woodlands from damage by fire." [779]

A pioneer effort has been made by the inclusion in the Hoylelake U.D.C. Act, 1935 (*cc*), of a section enabling the council to enforce measures to reduce the danger of fires breaking out by serving notices requiring the cutting of gorse or undergrowth on unenclosed spaces within their district. A copy of this clause will be found *post*, p. 338. [780]

SAFEGUARDS AND REMEDIES FOR FIRES

Considerable thought has been given to the possibility of framing a model scheme of co-ordinated action, including a suitable organisation for rapidly concentrating on an outbreak all available fire-fighting forces, but it seems impracticable to evolve a generally effective scheme. The unenclosed spaces liable to be ignited are of such variety as regards the availability of assistance, appliances and means of access and the character of their vegetation, that a scheme suitable for one district, or even one unenclosed space, might be unsuitable for a neighbouring district or space. It is felt, therefore, that although some definite and pre-arranged organisation is essential to the successful solution of the problem, each local authority, organisation or person contemplating a preservation scheme must deal with its own problems in the light of the local difficulties and resources, using to the best advantage the machinery mentioned and on the lines indicated later (*d*).

Although full measures can only be taken by local authorities in respect of unenclosed spaces which they own or over which they have powers of control, valuable precautions may be taken with the co-operation of interested landowners. These will seldom be numerous as land on which serious outbreaks are likely to occur is usually comprised in large estates. These precautions aim at securing that the earliest possible notice of an outbreak of fire is given to the person having the right or duty to deal with it, and that a settled programme of the steps to be taken by him to deal with the outbreak is available. A list should be prepared therefore of the unenclosed spaces in the area of the council on which fires are most likely to occur, and to this should be attached a sketch plan. In the list, opposite the description of each unenclosed space, should be placed the name, address and telephone number of the individual whom the landowner desires to be informed of an outbreak. The list and plan should be circulated to those persons living near each unenclosed space, to whom members of the public

(*cc*) 25 & 26 Geo. V., c. exx.

(*d*) The H.O., Forestry Commission, M. of A. & F., Commons, Footpaths and Open Spaces Preservation Society, and other bodies interested in open spaces prepare memoranda, pamphlets and instructions from time to time, and local authorities can keep in touch with the latest developments by consulting these bodies.

are most likely to give warning of an outbreak, although it is found that the public usually telephone to the police. The more widely the list and plan are circulated the better. Each police station and police officer, the fire brigade and selected officers of the council should be supplied with copies. The help of residents in the neighbourhood of each open space should be enlisted by supplying them with copies of the relevant parts of the list and plan which should also be exhibited on weatherproofed notice boards in conspicuous positions on or close to the unenclosed space. These precautions will, of course, be deprived of much of their utility if the person to be informed of an outbreak is not conversant with the programme to be followed on receiving the warning, but the details of each programme depend on the landowners concerned.

[781]

Where a local authority own or control an unenclosed space, that council can (1) reduce the number of fires by precautionary measures; and (2) control fires by organising a plan of action which will guarantee the early detection of an outbreak, the rapid transport of an adequate body of fire-fighters to the site, and secure the provision of an adequate supply of the best available apparatus. [782]

PRECAUTIONARY MEASURES (c)

These can be divided under two main heads for limiting the extent of fires and reducing their frequency.

To Limit Extent.—Measures for reducing and isolating danger areas include (1) the preparation of a sterile belt round each unenclosed space, and (2) the cutting of rides and trenches at intervals across each space, so that if fire breaks out it may be checked and adequate space may be provided in which fire-fighters may perform their work. If belts of vegetation are burnt out in advance on the margins of each unenclosed space, fires originating on adjoining land may be prevented from spreading to the space, and fire originating on the space may be limited to the space. [783]

To Reduce Frequency.—These measures include (1) the posting in conspicuous places of notices warning the public of the danger of certain acts in causing fire and how to avoid fires, and (2) the appointment of wardens, patrols and lookouts to watch for fires, to supervise frequenters of the unenclosed spaces and to give immediate alarm if fire breaks out thereon, or on adjoining land. [784]

REMEDIAL MEASURES

These can be grouped under three main heads, namely: (i.) Organisation, (ii.) Personnel, and (iii.) Material Appliances. [785]

Organisation.—Hitherto the chief difficulty in providing a quick and effective resistance to fire has been a lack of organisation for securing the services of some person to take charge of operations, to act on a definite scheme, with means of gathering assistance, and who knows

(c) These are fully explained in H.O. memorandum on "Heath and Common Fires," No. 211867/27 of 1934, H.M. Stationery Office, price 1d., and in an article on "Forest and Heath Fires," by Sir Roy Robinson in the *Journal of the Commons, Open Spaces and Footpaths Preservation Society*, April, 1934, Vol. III., No. 6.

what apparatus and appliances are available for fighting a fire, and where they may be obtained. It is of primary importance that some one person should be definitely in charge. The person selected must be well known to those who are entrusted with the detection of fires and to those whose help will be invoked. It will be his business to summon and employ the personnel and apply the apparatus available in an organised resistance on the most effective lines. If a whole-time officer cannot be employed by the council, it may be possible to employ rangers for protective purposes during week-ends and on days when the public most frequent unenclosed spaces. [786]

Personnel.—*Fire Brigades (f).*—Frequently difficulty exists in obtaining from towns the services of fire brigades for dealing with fires in remote rural areas. The absence or shortage of water is often a great impediment (*g*). A fire brigade is, however, of the greatest service, and the assistance of the fire brigade of the locality in which the outbreak occurs can be demanded. By agreement, the assistance of the brigade of a neighbouring borough, district or parish can also be obtained. [787]

Police.—As a rule the police force is only large enough to allow them to carry out their ordinary routine duties. In some localities the members of a borough police force constitute the fire brigade of the district (*h*) in addition to exercising their ordinary functions. Fire-fighting is not within the normal duties for which the Special Constabulary can be called out, but frequently their voluntary assistance can be secured. [788]

Military.—The War Office have issued instructions that the assistance of troops cannot be given upon the requisition of private property owners and can only be counted on by a local authority to fight general conflagrations as opposed to local outbreaks. If the help of troops is desired it must be definitely asked for by the local fire authority.

A local authority may be able to train portions of their own staff as fire-fighters. [789]

Voluntary Help.—Help may also be obtained from boy scouts, local watching committees and private individuals, particularly if a scheme has been prepared and is effectively organised. [790]

Material Appliances.—Arrangements should be made with telephone subscribers living near danger areas to allow their telephones to be used for summoning help and also for transport to be available at previously determined points to bring helpers to the site of an outbreak. Supplies of fire-fighting apparatus should be stored in depots known to the fire-fighting organiser. Beating with wet sacks, blankets and mats is more effective than dry beating with tree branches, fire brooms, sticks, shovels or poles. Hand-operated and small portable pumps will be found of great assistance (*i*). The use of water carts for wetting in advance belts of land on the flanks of fire may be invaluable. The

(*f*) For the general powers of a local authority in connection with fire fighting, see the title FIRE PROTECTION, *ante*, at p. 78. The position of the captain or superintendent of a fire brigade at a fire should be noted, if the P.H.A. (Amendment) Act, 1907, ss. 87—89 (13 Statutes 943) have been put in force by order.

(*g*) Reference should be made to the title HYDRANTS, *post*.

(*h*) Police Act, 1893, s. 2; 12 Statutes 855. See also *ante*, p. 68.

(*i*) Particulars of various types and prices of pumps are given in the H.O. Memorandum 211867/27 mentioned in note (*e*), *ante*, on p. 335.

process of counter-firing may in appropriate cases be employed with good effect (*j*). [791]

EXPENSES

If a fire brigade turn out in their own district their charges may have to be paid by the landowner demanding their services (*k*), as will also the expenses of any brigade from an adjoining district which may under agreement turn out at the call of the local fire brigade.

If troops are called out the cost of their attendance will have to be paid by the local authority who request their assistance. The War Office have intimated that they will hold a local fire authority, who ask for the assistance of troops, responsible for the payment of all *extra* cost occasioned, such as the cost of hiring vehicles from outside or a hiring charge for the use of Government vehicles for the transport of troops, and compensation for damage to clothing, equipment or tools. These arrangements apply only to the use of large bodies of troops and do not affect any existing arrangements for mutual assistance between military and civil fire brigades which are contained in regulations for army fire services. [792]

LIABILITY FOR DAMAGE TO ADJOINING LAND

Where an outbreak occurs on the land of one owner and spreads to the land of another, questions will often arise as to the liability of the owner of the land on which the fire originated for damage resulting therefrom to the property of other owners (*l*). A landowner is liable for the results of a fire, which is purposely kindled on his property by him or by some one for whom he is responsible, if it escapes beyond the bounds of his land and causes damage to neighbours, or their property, or the public. He is not, however, responsible for the results of a fire which is kindled by accident and without negligence, or for one which is kindled or spreads through the unauthorised act of a stranger, or *vis major*, or act of God. [793]

FIRE-RAISING AN OFFENCE

Setting fire to herbage has long been regarded as a grave offence, and by sect. 16 of the Malicious Damage Act, 1861 (*m*), it was made a felony, punishable with penal servitude, unlawfully and maliciously to set fire to any heath, gorse, furze or fern wheresoever it might be growing. Attempting to do so was also made a felony by sect. 18. Offences under sect. 16, *supra*, may be tried summarily or at quarter sessions (*n*). Under sect. 193 (4) of the Law of Property Act, 1925 (*o*), any person lighting a fire on land to which the section applies is liable on summary conviction to a fine not exceeding 40s. [794]

(*j*) This operation is explained in the article by Sir Roy Robinson mentioned in note (*e*), *ante*, on p. 335.

(*k*) See p. 84 *ante*.

(*l*) See Halsbury's Laws of England, Vol. XXI., title "Negligence," pp. 403 *et seq.*, and 36 Digest, pp. 55 *et seq.*

(*m*) 4 Statutes 565.

(*n*) Criminal Justice Act, 1925, ss. 18, 24 and First and Second Schedules; 11 Statutes 408, 411, 422, 423.

(*o*) 15 Statutes 372.

COPY OF SECT. 144 OF THE HOYLAKES U.D.C. ACT, 1935.

(1) Where in the opinion of the council it may be necessary for the purpose of preventing fires to lop or cut down gorse or any undergrowth on any unfenced land or common land within the district the council may serve a notice on the owner or occupier of such unfenced land in the case of unfenced land (other than common land), requiring him to lop or cut down such gorse or undergrowth within seven days and in default of compliance the council may enter on such land and themselves carry out the requisition of their notice doing no unnecessary damage.

(2) Any person aggrieved by any requirement of the council under this section may appeal to a petty sessional court within seven days after the service of such notice.

(3) Where any land in the district is or is reputed to be common land the council if in their opinion it may be necessary for the purpose of preventing fires to do so may enter upon such land without notice and may lop or cut down gorse or any undergrowth on such land. [795]

HEAVY LOCOMOTIVES

See ROAD TRAFFIC.

HEDGES

See TREES AND HEDGES.

HIGHER EDUCATION

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See also titles : EDUCATION ; EDUCATION FINANCE.

Meaning.—"Higher education" is defined in the Education Act, 1921 (a), as "education other than elementary education," but "elementary education" is not defined, although "elementary instruction in reading, writing and arithmetic" is referred to in sect. 42 of the Act (b). In practice, higher education includes those parts

(a) S. 170 (3) ; 7 Statutes 218.

(b) 7 Statutes 153.

of the education services which are provided by a local education authority for higher education (*c*) and on which the Board of Education pay grant under their regulations for secondary, further, technical and Welsh intermediate education (*d*), adult and higher education, special services (other than for children attending public elementary schools) and the training of teachers. In sect. 17 of the Welsh Intermediate Education Act, 1889 (*e*), "intermediate education" is defined as a course of education which does not consist chiefly of elementary instruction in reading, writing and arithmetic, but includes Latin, Greek, the Welsh and English languages and literature, modern languages, mathematics, natural and applied science, or in some such studies, and generally in the higher branches of knowledge. [796]

Power to Aid Higher Education.—Sect. 70 of the Education Act, 1921 (*f*), requires a higher education authority to consider the educational needs of their area and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of higher education, and to promote the general co-ordination of all forms of education. Although the councils of non-county boroughs and urban districts have a concurrent power of expending not more than the produce of a penny rate for the purpose of supplying or aiding the supply of higher education (*g*), this expenditure does not attract grant from the Board of Education. In exercising these powers, a higher education authority must consider existing schools and colleges (*h*). The power of a higher education authority to provide higher education includes the power (*i.*) to train teachers, (*ii.*) to supply or aid the supply of any education other than elementary education, (*iii.*) to provide higher education outside their area where they consider it expedient to do so in the interests of their area, and (*iv.*) to provide, or assist in providing, scholarships, maintenance allowances or paying the fees of students at schools, colleges, or hostels, either within or outside their area (*i*).

Considerable latitude is thus given to local education authorities in aiding higher education, and no detailed statutory conditions are imposed such as those in connection with elementary education. Administratively, this permits of a diversity of practice, among the authorities, for there is no legal obligation on a local education authority to provide any minimum of secondary, technical or other form of higher education. [797]

Religious Instruction.—A council in the application of money to higher education must not insist that any particular form of religious instruction or worship or any religious catechism or formula which is distinctive of any particular denomination shall, or shall not, be taught, used or practised in any school, college or hostel which is aided but not

(*c*) Local education authorities for higher education are the councils of counties and county boroughs. Higher education authorities may thus be also authorities for elementary education, but not all elementary education authorities are local education authorities for higher education.

(*d*) See Education Act, 1918, s. 42; 7 Statutes 128.

(*e*) 7 Statutes 271.

(*f*) *Ibid.*, 168.

(*g*) Education Act, 1921, s. 70 (2). But see L.G.A., 1929, s. 75 (1) (10 Statutes 932), increasing this to 1½*d.* in the pound from October 1, 1929.

(*h*) *Ibid.*, s. 70 (3).

(*i*) *Ibid.*, s. 71; 7 Statutes 168.

provided by the council (*k*). Also, no pupil must, on the ground of religious belief, be excluded from, or placed in an inferior position in, any such educational establishment which is provided by the council (*l*). In schools, colleges or hostels provided by a council, no catechism or formula which is distinctive of any particular denomination must be taught, except where the authority at the request of the parents of pupils allow religious instruction. If this is done, no part of its cost must be borne by the council, no unfair preference must be shown to any religious denomination, and the religious instruction given must be at such times and under such conditions as the council think desirable (*m*). [798]

To schools or colleges not provided by a council, but receiving a grant or maintained by them, the "conscience clause" applies, whereby no pupil, attending during the day or evening, can be required to attend or refrain from attending, any place of religion, whether in the school or college or elsewhere, as a condition of admission (*n*). Also, the time for religious worship or for any lesson on a religious subject must be conveniently arranged to allow of the withdrawal of any pupil (*n*).

These provisions apply not only to higher education authorities, but to councils of non-county boroughs and urban districts who exercise powers as to higher education. [799]

Transfer of Schools for Science or Art.—Machinery is provided in the Education Act, 1921, for schools or institutions for science or art to be transferred to a council having powers as to higher education (*o*). [800]

Continuation Schools.—The duty of securing the establishment of continuation schools is one that is placed on the authorities for higher education (*p*). [801]

Power to Aid Research.—A local education authority for higher education may aid students and teachers to carry on any investigation for the advancement of learning or research in, or in connection with, an educational institution. With this object in view, they may aid educational institutions (*q*). [802]

Types of Higher Education.—Higher education may be divided into three groups corresponding with the Board of Education's regulations: (i.) secondary schools, (ii.) further education, and (iii.) adult education.

Secondary Schools.—These are schools—sometimes termed "county schools" when provided and maintained by a local education authority—which provide a progressive course of general education suited to an age range at least from 12 to 17, and at which pupils intend to remain for at least 4 years and up to at least the age of 16. The curriculum must provide for instruction in English language and literature, at least one language other than English, geography, history, science, mathe-

(*k*) Education Act, 1921, s. 72 (1); 7 Statutes 169.

(*l*) *Ibid.*, s. 72 (2).

(*m*) *Ibid.*, s. 72 (3).

(*n*) *Ibid.*, s. 72 (4).

(*o*) S. 73 and Sched. IV., Part I.; 7 Statutes 169, 221.

(*p*) See s. 75 and title CONTINUATION SCHOOLS in Vol. IV.

(*q*) Education Act, 1921, s. 74; 7 Statutes 170.

matics, drawing, singing, manual instruction, domestic subjects, physical training and organised games (r). [803]

Further Education.—Under this heading are included the following: day continuation schools (s), junior evening institutes (a), senior evening institutes, junior technical schools, junior housewifery schools, technical day classes, art schools, junior art departments in art schools, colleges of further education. [804]

Adult Education.—State-aided part-time courses of Adult Education usually come under the following heads: (i.) extra-mural activities of universities, (ii.) provisions made by voluntary associations, and (iii.) classes provided by local education authorities. [805]

Extra-Mural Activities of Universities.—The Board of Education recognise the following activities: classes preparatory to third-year tutorial classes, third-year tutorial classes, advanced tutorial classes, tutorial class vacation courses and university extension courses. The Board of Education consider that for these classes and courses, the university should be responsible, should select the tutor, and approve the syllabus, even if the local education authority may pay the tutor's salary. [806]

Other Forms of Adult Education.—The Board of Education may also recognise part-time courses which are of a lower standard than that of university extra-mural work. Such courses may either be under the control and direction of an approved association undertaking adult education as one of its objects or, in exceptional circumstances, under the control and supervision of a university or university college providing tutorial classes, or under the control of the education authority themselves. The first type may be: (i.) a terminal course, providing meetings of not less than $1\frac{1}{2}$ hours' duration in not less than 12 weeks in a year; (ii.) a one year course, providing meetings of $1\frac{1}{2}$ hours' duration for 20 weeks in a year; or (iii.) vacation courses for selected students (b).

Adult education has been mainly built up by volunteers, but some local education authorities provide for the liberal education of adults in part-time courses in special institutes. Other authorities offer isolated classes in schools primarily devoted to vocational studies. Some local education authorities have accepted educational and financial responsibility for classes of the Workers' Educational Association and have submitted those classes for recognition by the Board of Education as part of the system of part-time courses under the education authority's direction. [807]

Financial Aid to Pupils and Students.—Sect. 70 (1) of the Education Act, 1921 (c), is so wide as almost to give a local education authority *carte blanche* in their financial aid to pupils and students, but sect. 118 of the Act, which deals with grants from public funds, must be read with sect. 70. Every secondary school must award places which, in cases of financial need, will carry total or partial exemption from tuition

(r) See title SECONDARY EDUCATION.

(s) See title CONTINUATION SCHOOLS in Vol. IV.

(a) See title TECHNICAL AND COMMERCIAL EDUCATION.

(b) See Board of Education Grant Regulations relating to Adult Education, and the Adult Education Amending Regulations of 1931 and 1935; S.R. & O., 1931, No. 605; 1935, No. 661.

(c) 7 Statutes 168.

and entrance fees. Not only may a parent be relieved in whole or in part of the payment of his child's tuition fees at a secondary school, but allowances may also be made covering the cost of travelling to and from the school, meals at the school and a school clothing outfit. Total or partial remission of fees may also be made in respect of pupils and students attending any of the schools, institutes, etc., mentioned under "Further Education," on p. 341, *ante*. Awards may also be granted to students proceeding to universities and other places of advanced education, and also to enable students to engage in research. Loans, without interest, are also made by some education authorities to intending teachers and those proposing to enter other professions. [808]

Courses for Blind, Deaf, Defective and Epileptic Students.—Full-time courses of higher education for blind, deaf, defective and epileptic students may be recognised by the Board of Education. These courses are primarily intended for students previously educated in special schools up to the age of 16 years (*d*).

These courses must be full-time courses in preparation for a trade and must give progressive instruction in all suitable branches of the trade, as well as instruction in general subjects and appropriate physical training.

Unless the Board of Education approve other arrangements, the instruction of these students must be organised apart from the employment of workers (*e*).

Students who have not previously attended special schools (*f*) may be admitted to a course if they are likely to profit thereby, but no student may be admitted to a course or allowed to continue in attendance who is unfitted to profit by the instruction provided (*g*). [809]

London.—The borough councils and the Common Council of the City of London are not local education authorities, and the L.C.C. are the sole local education authority in London under the Education Act, 1921. Where governors or managers are appointed by the local education authority on the governing body of any institution aided by grant from the local education authority, the provisions of the scheme or trust deed of the institution imposing any limit on the number of the members of the governing body, or requiring any qualification for those members, do not apply as respects such governors or managers (*h*). [810]

(*d*) The Board of Education Special Services Regulations, S.R. & O., 1925, No. 835, Art. 31. See also BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN, Vol. II. at p. 96.

(*e*) Art. 32.

(*f*) Art. 24 (1).

(*g*) Art. 33.

(*h*) Education (London) Act, 1903, Sched. I, para. 9 (7 Statutes 126).

HIGHLY RATED AREA GRANT

See GENERAL EXCHEQUER GRANTS.

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See also titles :

BRIDGES ;
DELEGATION OF HIGHWAY POWERS ;
HIGHWAYS, RIGHTS OF PRIVATE
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LONDON ROADS AND TRAFFIC ;
ROAD TRAFFIC ;
ROADS CLASSIFICATION ;
ROADS OR STREETS .

I. HISTORICAL SKETCH

The earliest highway authority of whom there appears to be any trace in English history is the medieval manorial court, which was a highway authority in the sense that the *trinoda necessitas*, which was cast upon every man and appears to have included an obligation to maintain the King's highway, was enforced through its machinery. It followed that where a road was repairable by a particular feudal

tenant as a condition of the general tenure of his lands (*ratione tenuræ*), the *trinoda necessitas* was excluded, so that this most important exception to the general rule that highways are repairable by the inhabitants at large appears to have existed from the earliest times. Apart from this, and the survival of a reference to the general duty in the expression "repairable by the inhabitants at large," the manorial jurisdiction has not left any very important mark on highway law. [811]

Origins of Parochial Liability.—The first important statute dealing with highways was passed in 1555 (*a*), whereby the duty was cast upon every parish of mending the highways passing through it. Whether this statute was merely declaratory of the common law as this had grown up during the decline and breaking up of the manorial organisation, or whether it enacted completely new machinery for the maintenance of highways, appears to be a matter of dispute. But of its effect there can be no doubt. From this time forward, at any rate, an underlying principle of the law of highway maintenance is the primary liability of the parish (*b*). But the parish so liable was not necessarily the ancient ecclesiastical or mother parish. As in the administration of the Poor Law, the vast extent of many of the ancient parishes, particularly in the north of England, led to the creation by custom of smaller units for highway administration; and the definition of "parish" in sect. 5 of the Highway Act, 1835 (*c*), covers any place or district maintaining its own highways, as well as parishes, townships, boroughs, etc., so maintaining them. In many instances, this area also differed from the civil parish or township.

The statute of 1555 was extended in 1562 (*d*), and made perpetual in 1587 (*e*), and until the Statute of William and Mary in 1691 (*f*) it formed the main authority for highway administration. [812]

The Highway Surveyor.—This important functionary in the history of highway law is first mentioned in the Act of 1555 already referred to, and the constables and churchwardens of every parish are directed in each year to summon together the inhabitants for the election of two surveyors of highways who are charged with the maintenance and repair of the highways of the parish, that is to say, the highways for the maintenance of which the Act makes the parish responsible. Like most medieval offices, acceptance was compulsory. The actual work of repair was to be performed by the occupiers of lands in the parish, and it is interesting to note that the obligation to repair highways lay literally on its inhabitants. The surveyors were to appoint four days in each year for highway repair. On each such day, the inhabitants were bound to supply both men and equipment as laid down in the Act, and the former were to labour for eight hours. By the extending Act of 1562, the number of days of this compulsory statute labour was raised from four to six and a new system of enforcing penalties enacted; the surveyor was required to inform the next justice of the peace of defaults by any inhabitants, and the justice was to present them at the

(*a*) 2 & 3 P. & M. c. 8.

(*b*) "By common law or of common right, the inhabitants of the parish at large are bound to repair the highways"; *R. v. Great Broughton* (1771), 5 Burr. 2700; 26 Digest 365, 907; *R. v. Sheffield* (1787), 2 Term Rep. 111; 26 Digest 358, 847; *Cubitt v. Maxse (Lady Caroline)* (1873), L. R. 8 C. P. 717; 26 Digest 282, 181.

(*c*) 9 Statutes 50.

(*d*) 5 Eliz. c. 13.

(*e*) 29 Eliz. c. 5.

(*f*) See *post*, p. 345.

next quarter sessions. This method of personal statute labour obviated the necessity for highways being maintained out of taxes or local rates (g), and the system was not formally abolished until the Highway Act, 1835 (h). [813]

It is, therefore, difficult to state exactly who was the highway authority between 1555 and 1691. The administrative officer was the surveyor, and the powers of the inhabitants could only be exercised once a year in vestry, and were limited to electing the surveyors; following election the vestry had no control. The functions of quarter sessions were limited to enforcing the duties of statute labour upon complaint by the surveyor through the means of a presentment by the local justice of the peace, and the justice could only present defaults of which he was informed by the surveyor. The eventual enforcement of the duty of repair of highways, if none of these officers did their duty, was by indictment of the inhabitants of the parish or other persons liable to repair the road, and this might be instituted in the name of the Crown by any credible person who was capable of giving evidence. It is probably correct, therefore, to say that at this time there was a system for the administration of highway maintenance, but no authority responsible for it. [814]

Act of 3 William and Mary, 1691.—The effect of this Act of 1691 (i) was a re-allocation of supervisory functions. A much greater measure of control was given to the local justices of the peace, a control which has not yet wholly been taken from them. Justices in petty sessions were directed to hold special highway sessions at stated intervals, in which they were to supervise the repair of the highways in parishes within their division. At the same time the power of the vestry to choose their own surveyors was transferred to the justices sitting in special sessions; and the function of the vestry was reduced to preparing annually a list of qualified persons from which list the justices made the appointments. Further, the surveyors were directed to keep accounts for the year, which were annually to be submitted to and passed by the special sessions, who also dealt with any defaulters. Justices in special sessions acquired, in consequence, a threefold control over the highway surveyor, having in their hands (1) his appointment, (2) a supervision of the work of highway repair for which he continued to be responsible, and (3) supervision of his accounts. By the same Act, quarter sessions were made a court of appeal from special sessions, instead of, as formerly, dealing with defaulters direct. This statute, though amended in certain particulars, continued in force until the Highway Act, 1835. [815]

Beginning of Highway Rates.—Up to this stage in the development of highway law, all highways, except *ratione tenuræ* highways, were on the same footing, and the obligation to repair consisted of a direct personal obligation to give or supply direct labour and materials. As

(g) "The parish is at common law bound to repair all public highways, this being by the common law the mode by which each parish contributes its share towards the public burden of repairing all highways, instead of all the public roads being repaired by one general tax. The parish must bear in that shape its share of the general burden, and its inhabitants receive an equivalent, not in the use of that road in particular, but in the use of all the public roads in the realm," *per* PARKE, B., in *R. v. Leake (Inhabitants)* (1833), 5 B. & Ad. 469; 26 Digest 290, 225.

(h) See *post*, p. 348.

(i) 3 Wm. & M. c. 12.

already stated, this position continued until 1835, but long before then the plan of performing this duty by hired labour and commuting the liability for a money payment had become common. Money payments first arose in a peculiar manner. The amending Act of 1562 had provided for the presentment by a justice to quarter sessions of defaults in the duty of highway maintenance, and, as the Act made such a presentment equivalent to the presentment of a grand jury, the inhabitants of the parish were immediately indicted thereon. The indictment was for a public nuisance through allowing the highway to fall into disrepair, and the punishment directed was a fine, leviable on any inhabitant, which was to be devoted to the repair of the highway. This system was even extended by the Act of 1691, which (1) enabled the inhabitant upon whom the fine had been levied to obtain contribution from his fellow inhabitants, thereby placing what was in effect the liability of the whole parish on a contributive basis, and (2) reducing the fines leviable upon persons failing to perform their statute labour to fixed amounts set out in a table. The effect was that the consequences of default became ascertainable in terms of cash, and, although individual defaulters would have to bear their own fines, a fine imposed in respect of a general liability of the whole parish became rateably distributed. The Act laid even more distinctly the foundation of highway rates by a provision for the collection of contributions by those inhabitants who had been compelled in the first place to discharge the collective liability of the parish. They might procure a direction from the local justices sitting in special sessions to levy a rate on the parish to reimburse them; so that, through this somewhat clumsy procedure, a foundation was laid for the vicarious performance of the duty of direct statute labour and the substitution of a money payment. [816]

The Act of 1691 went further in this direction in another way and for a different reason. In the second year after the Restoration, it was found that a considerable accumulation of highway repairs, owing to neglect during the interregnum, had led to a position in which some extraordinary measure was necessary to restore the old system of highway maintenance. Accordingly by an Act of 1662 (*k*) justices in special sessions were authorised during a period of three years to raise a rate not exceeding 6*d.* in the £ in their parishes, the proceeds of which were to be devoted to the execution of extraordinary repairs to highways which it was beyond the powers of ordinary statute labour to remedy. A similar provision, also limited to three years, was made by an Act of 1670 (*l*). The Act of 1691 made this system, which had originally been intended to be temporary and to meet an extraordinary emergency, permanent, not in the sense of imposing it as a regular annual provision, but by authorising quarter sessions to impose such a sixpenny rate as need arose, and further giving power to justices in special sessions to make rates to cover the surveyors' expenditure on materials used for highway repair. Finally in 1715 by a further statute (*m*), the sixpenny rate for supplementing the statute labour was authorised to be levied in advance and before the statute labour was performed. It followed, therefore, that rates could be raised for the maintenance of parochial highways with sufficient ease to make it unnecessary to rely on the old statute labour, which accordingly fell into disuse and was abolished in 1835. The

(*k*) 14 Car. 2, c. 6.

(*m*) 1 Geo. 1, st. 2, c. 52.

(*l*) 22 Car. 2, c. 12.

system of indicting the inhabitants if default in repair occurred did not, however, fall into disuse, and is still available if necessary (*n*). [817]

Creation of Special Authorities.—The Act of 1715 had a minor provision of some importance, in that it authorised the levying of a sixpenny rate for repairing streets in towns. Before the 18th century, no distinctions in highways were recognised. Naturally it would happen that the more frequently used roads would require correspondingly more frequent repair, but no special provision was made for them and no sort of distinction was made in theory between one sort of highway and another. But during the 18th century it came to be realised that for two types of roads something more than the ordinary parochial machinery for repair was needed, and special provision was made for these types by segregating them from the highways parochially maintained and creating special highway authorities for their administration. These two types of highways were (1) streets in towns, and (2) turnpike roads. [818]

(1) *Streets in Towns.*—The first special provision for the repair of streets in towns and the raising of rates for that purpose, was the power of raising a sixpenny rate conferred by the Act of 1715 already noticed. In addition special powers were later conferred by local Acts of Parliament, the usual procedure being to establish a body of paving commissioners with power to pave and maintain the streets of a town and to borrow money and levy rates for those purposes. These local Acts began to be common by the middle of the 18th century. [819]

(2) *Turnpike Roads.*—Before the middle of the 17th century, extensive journeys were undertaken as rarely as possible, the regular coach services of 100 years later being as yet non-existent. But by the beginning of the 18th century the growth of wheeled traffic and the consequent necessity of an improvement of the type of road repaired by statute labour, led to a new type of highway legislation. Like so many features of highway law, this was originally designed as a temporary and local expedient, and grew into a widespread system. Travelling between populous centres had become frequent, but the communications were bad, and new communications between towns of importance were not constructed, although during the reigns of the Georges new bye-roads were often constructed under directions given in inclosure awards on common land being inclosed. Communication was frequently circuitous, and travelling by fast wheeled traffic practically impossible. This gave a chance to the private speculator. Individuals subscribed amongst themselves and obtained a private Act of Parliament authorising them to construct and maintain a road between specified points, and to take specified tolls from persons using the road. The grant of these powers was at first violently opposed, petitions being presented to Parliament against the Bills; and general Acts were later passed for their regulation (*o*). The general system was to establish turnpike trusts under trustees who were given power to maintain the road and take tolls from persons passing along the road with horse,

(*n*) At the Surrey Assizes on December 6, 1921, the inhabitants of Ewell, represented by Thomas Oswald Masters, bank manager, and Edward Waterer Martin, magistrate, were found guilty of failing to repair Firtree Road, which carries heavy traffic to and from Epsom Racecourse. BAILHACHE, J., bound the defendants over, the Epsom R.D.C. undertaking both to pay the costs, and, if there was no appeal, the liability for the repair and maintenance of the road; (1921), 85 J. P. (Jo.) 572.

(*o*) See *per* Lord ABERNETHY, C.B., in *Northam Bridge and Roads Co. v. London and Southampton Rail. Co.* (1840), 6 M. & W. 428; 26 Digest 268, 76.

vehicle or cattle, turnpike gates being set up for the collection of the tolls; the obligation of the parish to repair and maintain the road was suspended in practice during the subsistence of the trust. The construction of new roads was also authorised. Powers were conferred for a limited period only, the usual term being twenty-one years.

The distinctive mark of a turnpike road was the right of the trustees to set up gates thereon and to refuse passage unless the prescribed toll were paid. These gates were called "turnpikes" from a fancied resemblance to a defensive military engine (*p*). They could not lawfully be erected on highways except with statutory authority, nor could a highway, except under a statute or a Royal Grant, be dedicated to the public subject to a condition that the public should pay tolls to the owner for using it (*q*). If such a road was so dedicated under authority it was not a turnpike road (*r*).

If a turnpike trust expired at the end of the period fixed by the local Act, the road reverted to the legal position it would have occupied if the Act had not been passed. If it had previously been a highway repairable by the inhabitants of the parish, their duty of repair attached on its expiry. If it had not been parochially repairable but was first constructed under a turnpike trust, the public right of passage was at an end unless other means were taken to renew or continue such right (*s*). Consequently it became a desirable policy to continue turnpike trusts, especially as experience showed that the road was allowed to deteriorate on the abolition of a turnpike trust. It followed that the renewal of turnpike trusts at first was frequent, then usual, and finally almost invariable. So long as a turnpike trust could continue to function efficiently it had an almost permanent expectation of life; but financial mismanagement led to the bankruptcy of many of the trusts, and by the middle of the 19th century public feeling demanded a reorganisation of the system. [820]

Highway Act, 1835.—The position, therefore, as regards highway authorities at the time of the passing of this statute was that most of the main roads were repaired by local turnpike trustees, streets in many towns by paving commissioners under local Acts, and other highways by the parochial surveyor by means of the highway rate, statute labour having fallen into desuetude. Only parish highways were directly dealt with by the Act of 1835, but its provisions became applicable in different ways to both the other forms (see *post*, pp. 349, 351). This Act, which still remains the authority for much of our highway law, finally abolished statute labour and permanently established the system of maintenance of highways through rates. It set up three possible forms of highway authority, (1) the parish, (2) the board for the repair of highways formed under sect. 18 of the Act (*t*), and (3) the highway district under a district surveyor appointed for two or more parishes under sects. 13, 14 of the Act (*u*). The first was

(*p*) The exact nature of a turnpike is not known, except that it was used for repelling a charge made with pikes; it has been identified with the *chevaux de frise* (see Oxford English Dictionary, title "Turnpike").

(*q*) *Austerberry v. Oldham Corpn.* (1885), 29 Ch. D. 750; 26 Digest 267, 71.

(*r*) *Midland Rail. Co. v. Watton* (1886), 17 Q. B. D. 30; 26 Digest 267, 72.

(*s*) *R. v. Winter* (1828), 8 B. & C. 785; 26 Digest 478, 1902; *R. v. Thomas* (1857), 7 E. & B. 399; 26 Digest 361, 871; *R. v. Mellor* (1830), 1 B. & Ad. 32; 26 Digest 360, 865.

(*t*) 9 Statutes 57.

(*u*) *Ibid.*, 55.

merely the continuance of the former normal unit of highway administration; the second and third were the prototypes respectively of two later types of highway authority, the urban and R.D.C. The board for repair was the method devised for the large parish and could only be established for a parish with a population of over 5,000; the highway district, on the other hand, was only appropriate to smaller parishes, and consisted of a union of parishes for performance of highway functions.

A board for repair was elective, and exercised in their parish all the powers and responsibilities of the inhabitants in vestry assembled and of the surveyor (*a*), thereby itself becoming the surveyor. It is from this point that it becomes necessary carefully to distinguish between the statutory highway surveyor, who alone is meant by a reference to the surveyor in the Act and who might be superseded by the board for repair, and the surveyor who is merely an official of the board or council.

The systems of administration (2) and (3) were not commonly adopted. For instance, less than a dozen boards for repair were constituted in England.

If no board for repair was appointed or no union of parishes for highway purposes took place, the parish continued as the administrative authority for highways other than turnpikes. The vestry were again required to appoint one or more persons to be surveyors of highways, the appointment being still for one year only, and if they failed to do so the justices in special sessions were to make the appointments (*b*). The person elected was compelled to serve or to provide a deputy, and refusal to do so was visited with a fine (*c*), but an alternative was given by sect. 9 (*d*) and instead of electing one of their own number the vestry might elect a person of skill and experience to be surveyor at a salary. The surveyor was to present his accounts each year to the justices to be passed by them, but later submission of the accounts to audit by district auditors was substituted. The surveyor was authorised to levy a rate on the parish to cover expenditure incurred in the maintenance and repair of highways in the parish (*e*). Usually only one surveyor was appointed. [821]

P.H.A., 1848 (*f*).—The main purpose of this statute was to provide for the constitution of local boards of health in urban areas. As yet any general local authority for public health purposes, other than the vestry, was unknown. The statute marks the first departure by creating one local authority in an urban area and transferring to it a number of hitherto unrelated powers exerciseable for the general health and well-being of the inhabitants. By sect. 117 these local boards of health were invested with the same powers and duties of surveyors of highways as the highway boards, and by the L.G.A., 1858 (*g*), the number of such local boards of health was increased. These Acts thus created a new class of highway authority, who were themselves invested with the powers and made subject to the liabilities of surveyors of highways. [822]

(*a*) Highway Act, 1835, s. 18; 9 Statutes 57; repealed by L.G.A., 1933.

(*b*) *Ibid.*, ss. 6, 11; *ibid.*, 52, 54; both repealed by L.G.A., 1933.

(*c*) *Ibid.*, s. 8; *ibid.*, 53; repealed by L.G.A., 1933.

(*d*) *Ibid.*, s. 9; *ibid.*, 53; repealed by L.G.A., 1933.

(*e*) *Ibid.*, s. 27; *ibid.*, 63.

(*f*) 11 & 12 Vict. c. 63; repealed by P.H.A., 1875.

(*g*) 21 & 22 Vict. c. 98; repealed by P.H.A., 1875.

Highway Act, 1862.—The main object of this Act was to obtain greater economy and efficiency in highway administration by enlarging the administrative areas. Instead of leaving the initiative for a combination to a parish or parishes, this was transferred to quarter sessions, who were empowered by sect. 5 of the Act (*h*) to divide the whole or part of their county into highway districts (*i*). For every highway district so formed there was to be a highway board, who were a body corporate (*k*) consisting partly of elected waywardens and partly of county justices residing within the district, and were invested with the powers and duties of the parochial surveyors of the former parishes (*l*). By sect. 39 (*m*) highway districts already existing might be altered, combined or dissolved, but since by sect. 7 (*n*) a restriction was placed on the inclusion in such a highway district of any district constituted under the P.H.A., 1848, or L.G.A., 1858 (see *ante*, p. 349), it was possible for a parish which wished to avoid inclusion in such a highway district to do so by adopting urban powers under those Acts. Later it was found necessary to check this by the L.G. Amendment Act, 1863 (*o*), which prohibited the adoption of the L.G.As. by parishes with populations of less than 3,000. By the P.H.A., 1872 (*p*), the whole of England and Wales was divided into urban and rural sanitary districts, and as regards the former the Act provided that the L.G.As. should be in force therein without adoption. This Act was consolidated without any change of importance in the P.H.A., 1875 (*q*), with the result that the urban sanitary authority (including the borough council), who took the place of the former local boards of health and improvement commissioners, became both highway authority and highway surveyor for their district or borough. Highway authorities at this date, therefore, were reduced to five, (1) urban sanitary authorities, (2) highway boards, (3) the board for repair if the parish had a population exceeding 5,000, and was not comprised in a highway district, (4) the surveyor of highways, and (5) turnpike trustees. [823]

Highways and Locomotives (Amendment) Act, 1878.—In the meantime the position of turnpike roads had become a matter of public concern. The enormous growth of railways from 1840 onwards caused a great decline in tolls, and the financial results on trusts which were not even at the best of times well managed, were disastrous. Attempts were made to support their finances by granting a portion of the highway rates in aid, but so many trusts had to be wound up that a Royal Commission and various Parliamentary Committees were appointed to regulate the renewal of turnpike trusts and to grant renewal only to those which were competent. It was not found practicable to save the system, and general legislation had to be introduced, though actually the last turnpike trust did not disappear until 1895.

The Act of 1878 proceeded upon experience. A disturnpiked road, was not, like an ordinary parochial highway, designed and maintained to serve purely local needs, and unsuitable as a means of general

(*h*) 9 Statutes 124.

(*i*) By the Highways and Locomotives (Amendment) Act, 1878, s. 3 (9 Statutes 167), regard was directed to be paid in exercising these powers to the boundaries of rural sanitary authorities, and the highway districts were to be as nearly as possible coincident in area or wholly contained within rural sanitary districts.

(*k*) Highway Act, 1862, s. 9 (2); 9 Statutes 126.

(*l*) *Ibid.*, s. 11; 9 Statutes 128.

(*m*) 9 Statutes 136.

(*n*) *Ibid.*, 125.

(*o*) 26 & 27 Vict. c. 17, since repealed by the P.H.A., 1875.

(*p*) 35 & 36 Vict. c. 79.

(*q*) 13 Statutes 623.

communication. The turnpike road, on the contrary, was designed essentially as a trunk communication to serve the needs of the coach traffic prior to its decay. So long as the two systems existed side by side and were both financially competent, the parochial roads being maintained by the parish and the main trunk roads by the tolls of the passengers who used them, no difficulty arose. But where a former turnpike road became disturnpiked it fell back among the ordinary highways of the parish so far as it was comprised therein. Necessarily this produced unfair results, as the benefits of user by a parish were by no means necessarily proportionate to the length of road which it contained, and in fact the advantages might be confined to the termini. Accordingly pressure was brought to bear to ensure that areas wider than the parish should maintain these particular roads.

[824]

The Act of 1878 inaugurated a system which, with considerable modifications and developments, continues to be a most important part of highway administration in England. It prepared the way for the final abolition of the turnpike system and the relegation of turnpike roads to the care of the ordinary highway authorities, but at the same time kept them as a distinct feature of highway administration and distributed the financial burden of their maintenance in a more equitable manner. All roads disturnpiked after December 31, 1870, became main roads, and main roads were thereafter to be maintained by the local highway authority who were to be reimbursed one-half of the expense of doing so by the county quarter sessions (*r*). Other roads might become main roads by order of quarter sessions (*s*), or a main road might be reduced to the status of an ordinary highway by provisional order of the Local Government Board (*t*). A further contribution, this time from the Exchequer direct, of one-half of their remaining liability, *i.e.* one-quarter of the total cost of the maintenance of main roads, was granted to the local highway authorities in 1882, and in 1887 a similar grant in aid to the county authority of one-half of their liability, ensured that a still wider area of contribution to the cost of the maintenance of trunk highways was established and national responsibility to the extent of a moiety of the whole cost recognised.

By sect. 14 of the Act of 1878, highway areas in England were declared to be (1) urban sanitary districts (including boroughs), (2) highway districts, and (3) highway parishes not included within any highway district or any urban sanitary district. [825]

L.G.A., 1888.—The Act of 1888 (*u*) transferred to the newly established county councils many of the powers formerly exercised by justices in quarter sessions. By sect. 11 (*a*) liability for the maintenance of every main road in a county was as from April 1, 1889, transferred to the new county council and the cost thereof charged upon the county rate. At the same time the Exchequer grants in aid ceased, but by sects. 20—27 (*b*) a new system of grants in aid of the county funds was established, the most important from a highway authority's point of view being a

(*r*) Highways and Locomotives (Amendment) Act, 1878, s. 13; 9 Statutes 172.

(*s*) *Ibid.*, s. 15; *ibid.*, 172. Now the county council.

(*t*) *Ibid.*, s. 16; *ibid.*, 173. Now the Minister of Transport.

(*u*) 10 Statutes 686 *et seq.*

(*a*) *Ibid.*, 693.

(*b*) *Ibid.*, 700—706.

local taxation licence on carriages and locomotives (*c*). The Act provided an exception to the general rule that the duty of maintenance of all main roads passed to the county council, in that the council of a borough or urban district might, within twelve months of the passing of the Act or of a road becoming a main road, claim to retain the powers and duties of maintaining and repairing any such main road in its district (*d*); if this were done, the county council were to pay to the urban authority an annual payment towards their expenses, the amount, in the absence of agreement, being fixed by the Local Government Board. Further the county council might by contract arrange for the maintenance of any main road by the district council of the district through which it passed, and might contribute to the maintenance, enlargement or repair of other highways by such district councils (*e*). By sect. 34 of the Act (*f*) county borough councils were given the same powers as county councils within their area in so far as they had not already such powers, so that a main road within a county borough passed to the exclusive control of the borough council. [826]

L.G.A., 1894.—This Act effected a marked simplification in the division of highway functions. In the first place, it transformed local boards, improvement commissioners and rural sanitary authorities into urban and rural district councils (*g*), the council of a non-county borough continuing to have the powers of an urban authority for their borough. Secondly, it abolished highway boards, and in rural areas transferred the powers, duties and liabilities of rural sanitary authorities, highway boards, and the parochial surveyors of parishes not included within a highway district, to the R.D.C. (*h*). Powers were given to the county council, with the sanction of the Local Government Board, to postpone the transfer, but when this was complete, highway authorities were reduced to three classes; (1) county borough councils for all roads within their area, (2) county councils in respect of main roads (except where powers of maintenance had been claimed by the borough or district council) and also in respect of roads other than main roads where they had undertaken the duty, and (3) the council of the non-county borough, urban or rural district. [827]

Growth of National Responsibility for Main Roads.—Any notion of central control or responsibility for main roads was unknown until after the middle of the 19th century, and the first instance of recognition that main roads were a national responsibility originated with the grants in aid made in 1882 to the justices in quarter sessions. The local taxation licences, the proceeds of which were allocated to county councils by L.G.A., 1888, gave highway authorities the benefit of such contributions to the cost of maintaining main roads as were made by the users of them. By sect. 20 (*g*) of L.G.A., 1888 (*i*), the power of levying all or any of these local taxation licences direct might be transferred to county councils by Order in Council, and by sect. 6 of the Finance Act, 1908 (*k*), as applied by an Order in Council made under the section (*l*), such powers of levying (*inter alia*) the licence duties on carriages imposed by the Act of 1888 and a further duty on light locomotives

(*c*) L.G.A., 1888, s. 20 and First Schedule; 10 Statutes 700, 770.

(*d*) *Ibid.*, s. 11 (2)—(5); *ibid.*, 693.

(*e*) *Ibid.*, s. 11 (4); *ibid.*, 694.

(*g*) L.G.A., 1894, s. 21; 10 Statutes 792.

(*h*) *Ibid.*, s. 25; *ibid.*, 794.

(*k*) 16 Statutes 739.

(*f*) 10 Statutes 711.

(*i*) 10 Statutes 700.

(*l*) S.R. & O., 1908, No. 844.

used either as carriages or hackney carriages imposed by the Locomotives on Highways Act, 1896 (*m*), were transferred to all county and county borough councils and collected direct by them.

By the joint operation of sect. 88 (2) of the Finance (1909-10) Act, 1910 (*n*), and sect. 18 (1) of the Revenue Act, 1911 (*o*), these provisions were extended to the duties on all carriage licences, including those for motors, but the amount to be collected by any county or county borough council was stabilised at that collected by the same authority in the year ending March 31, 1909, as certified by the Local Government Board, the balance being paid into the Exchequer and any deficit being paid thereout to the council concerned. By sect. 13 of the Finance Act, 1920 (*p*), these excise licence duties ceased and a new excise duty in accordance with the Second Schedule to that Act (*q*) was substituted; this new duty was directed by sect. 1 of the Roads Act, 1920 (*r*), to be levied by county and county borough councils and paid into the Exchequer, and by sect. 2 a fixed sum equal to the total of the carriage licences collected by all county and county borough councils in the year ending March 31, 1909, was to be paid out to such county and county borough councils in the proportions in which they were certified to have been collected respectively by them in that year, and the balance was to be paid into the Road Fund set up by the Act (*s*). These payments were charged on the Consolidated Fund or the growing produce thereof (*t*), and accordingly became discontinued grants under the provisions of L.G.A., 1929, presently to be noticed (*u*), and are not now receivable by county and county borough councils. [828]

In the meantime a system had grown up of direct grants in aid not limited to the proceeds of the excise licence duties. By sect. 8 of the Development and Road Improvement Funds Act, 1909 (*a*), the Road Board set up by that Act were given power (i.) to make advances to county councils and other highway authorities in respect of the construction of new roads or the improvement of existing roads, and (ii.) to construct and maintain any new roads, which under either head appeared to the Board to be required for facilitating road traffic; under the first head they might also contribute towards the cost of maintenance of roads, advances being either by way of grant or by way of loan. On the setting up of a M. of T. these powers were transferred to the Minister, whose powers of making grants will be described in the title ROAD GRANTS. The Minister was also authorised to classify roads, and might also by agreement with the local authority defray one-half of the salary and establishment charges of the engineer or surveyor of a local authority responsible for the maintenance of roads, subject to the condition that the appointment, retention and dismissal of such engineer or surveyor, and the amount of such establishment charges, should be subject to his approval (*b*). By sect. 3 (4) of the Roads Act, 1920 (*c*), the Road Fund was in future to be disbursed in the following order: (1) the expenses of county councils in respect of levying the duties, registration

(*m*) 59 & 60 Vict. c. 36, s. 8.

(*o*) *Ibid.*, 764.

(*q*) *Ibid.*, 861.

(*s*) Roads Act, 1920, ss. 2, 3; 19 Statutes 86, 87.

(*t*) *Ibid.*, s. 2 (1); *ibid.*, 86.

(*u*) L.G.A., 1929, s. 85 and Second Schedule; 10 Statutes 937, 979.

(*a*) 9 Statutes 212.

(*b*) M. of T. Act, 1919, s. 17 (2); 3 Statutes 435.

(*c*) 19 Statutes 87.

(*n*) 16 Statutes 759.

(*p*) *Ibid.*, 852.

(*r*) 19 Statutes 85.

of vehicles, etc., (2) the amount, as determined by the Minister with the approval of the Treasury, which local authorities had been accustomed to receive for local taxation licences on mechanically propelled hackney carriages, (3) administrative expenses of the Roads Department of the M. of T., (4) such portions of salaries and establishment charges of engineers and surveyors as the Minister undertook to pay under sect. 17 of the M. of T. Act, 1919, *ante*, and (5) administrative expenses of any other Government department incurred under the Act of 1920; and the balance was placed at the disposal of the Minister for the purposes of the Development and Road Improvement Funds Act, 1909. In 1926, in order to obtain a sum of £7,000,000 out of the Road Fund to balance the Budget of that year, the sum paid out of the Consolidated Fund under sect. 2 of the Roads Act, 1920 (*d*), was reduced by one-third of the net proceeds of the licences, and the payment into the Road Fund correspondingly reduced (*e*). Sect. 2 has also been amended by sect. 117 of the Road Traffic Act, 1930 (*f*). [829]

L.G.A., 1929.—The object of this statute was to co-ordinate local government as suggested by the Royal Commission on Local Government. The Act did not alter the position as highway authorities of county borough councils, who had already full powers over all highways in their areas, but as regards other authorities sought again to relate the burden of the maintenance of roads to the areas which really derived benefit from them. Consequently the Act continues to regard main roads as being partly a county and partly a national concern, and includes for this purpose all classified roads (*g*) whether situate in urban or rural areas; other roads in urban areas continue to be regarded as a local concern, but in rural districts the whole of the burden of highway maintenance is transferred to the county council, though there are powers of delegation. At the same time the Act altered the system of grants in aid. Thus the grants payable out of the Consolidated Fund, including those payable under the Roads Act, 1920, are discontinued, and so are all road grants, except as regards classified roads in counties (*h*). A new system of block grants to cover all services is substituted by Part VI. of the Act (*i*), and by sect. 87 (*k*) the certified amount of the discontinued road grants with certain other payments are to be transferred out of the Road Fund each year and appropriated in aid of the general Exchequer grants. The details of the Act and the changes made by it appear under other titles. [830]

II. PRESENT HIGHWAY AUTHORITIES

(A) **County Councils.**—By the L.G.A., 1929, the county council became the highway authority within the county for all county roads, these being:

- (1) All roads which on April 1, 1930, were main roads or would at any time thereafter have become main roads (*l*);

(*d*) *Ante*, p. 353.

(*e*) Finance Act, 1926, s. 42; 16 Statutes 968.

(*f*) 23 Statutes 685.

(*g*) Under M. of T. Act, 1919, s. 17, see *ante*, p. 353.

(*h*) L.G.A., 1929, s. 85, and Sched. II., para. 3; 10 Statutes 937, 979.

(*i*) *Ibid.*, ss. 86—100, 103—110; *ibid.*, 938—946, 948—951.

(*k*) 10 Statutes 939.

(*l*) L.G.A., 1929, s. 29 (1); 10 Statutes 903. Such main roads were in ordinary county areas (except where a dismaining order had been made under s. 16 of High-

- (2) All highways in rural districts within the county (*m*); and
- (3) All classified roads in a non-county borough or urban district within the county (*n*).

The county council have power to enlarge the first class under sect. 15 of the Highways and Locomotives (Amendment) Act, 1878, whereby an U.D.C. or non-county borough council may apply to them for an order declaring a highway in their district to be a county road where it ought to be such by reason of its being a medium of communication between great towns, or a thoroughfare to a railway station, or otherwise, and by sect. 37 (1) of the L.G.A., 1929, this may also be done where the road in question is situate in a part of an urban district which is of a rural character. It is within the discretion of the county council whether they will make such an order, and they must first have been satisfied that there is probable cause for the application and have inspected the road (*o*), but if they refuse to make the order, or fail within six months to make it, or if, having made it, they refuse or fail within six months to confirm it, the applicant authority may appeal to the Minister of Transport who may, after considering any representations made by the county council and, if the council so require, after holding a local inquiry, make an order declaring the highway to be a county road, the order having effect as if it were an order made and confirmed by the county council under the section and coming into operation on such date as is fixed by them. The declaration even when made does not take effect until the road has been placed in proper repair and condition to the satisfaction of the county council (*p*). The order must be deposited at the office of the clerk of the county council for the inspection of persons interested at all reasonable hours, and is not valid unless and until confirmed by a further order within six months (*q*).

Sect. 16 of the Act of 1878 contains a corresponding power to reduce a county road to the status of an ordinary highway. The power is exercised by the Minister of Transport on the application of the county council in cases where the latter are of opinion that a county road ought to be so reduced; the Minister, if of opinion that there is probable cause

ways and Locomotives (Amendment) Act, 1878; 9 Statutes 173), (1) former turnpike roads disturnpiked before the passing of the Act of 1878, except roads ordered to remain as an ordinary highway (see *ante*, p. 351), (2) turnpike roads disturnpiked after the Act of 1878, (3) roads declared to be main roads by quarter sessions under s. 15 of the Act of 1878, or by the county council after the passing of the L.G.A., 1888, (4) roads constructed by the county council with the aid of a grant under the Development and Road Improvement Funds Act, 1909. The roads which would, apart from s. 29 (1) of L.G.A., 1929, have become main roads, are roads which are later declared to be such under s. 15 of the Act of 1878, or are constructed as such under s. 10 (2) of the Act of 1909.

(*m*) L.G.A., 1929, s. 30 (1); 10 Statutes 904.

(*n*) *Ibid.*, s. 31 (1); 10 Statutes 905. If a road vested in a borough council or U.D.C. is classified after April 1, 1930, in consequence of an advance being made under the Act of 1909, in respect of it, the county council automatically become the highway authority in respect of such road (L.G.A., 1929, s. 31 (2); 10 Statutes 905).

(*o*) Highways and Locomotives (Amendment) Act, 1878, s. 15; 9 Statutes 172. In this Act the words "highway authority" can now only mean urban and non-county borough authorities (see definition in *ibid.*, s. 38; 9 Statutes 185, having regard to the fact that rural district councils are no longer highway authorities), and "main road" is to be read as "county road"; L.G.A., 1929, s. 29 (1); 10 Statutes 903. The provisions as to appeal to the M. of T. are contained in *ibid.*, s. 37 (2), (3) (10 Statutes 912, 913), and if an inquiry is to be held, the provisions of *ibid.*, s. 129 (10 Statutes 968), as amended by L.G.A., 1933, Sched. XI., Part IV. (26 Statutes 537) will apply.

(*p*) L.G.A., 1888, s. 11 (7); 10 Statutes 694.

(*q*) Highways and Locomotives (Amendment) Act, 1878, s. 15; 9 Statutes 172.

for the application and after satisfying himself by inspection, may reduce the road in status by means of a provisional order, the costs of which must be defrayed by the county council (*r*). If the road is in a municipal borough, the Minister must, before making the order, consider any representation by the borough council, and, if so requested by them, must hold a local inquiry (*s*). An order cannot be made under this section for a reduction in the status of a classified road (*t*).

The county council have as regards every road in the county which is for the time being a county road, inclusive of every bridge carrying such road if repairable by the highway authority (*u*), the duty of wholly maintaining and repairing such road, and for purposes of maintenance, repair, improvement and enlargement of, and other dealing (*a*) with such road have the powers and are subject to the same duties as the old highway board (*b*), including the powers of preventing and removing obstructions (*c*), and for asserting the right of the public to the use and enjoyment of the roadside wastes (*d*); the execution of these functions being a general county purpose, the costs thereof are chargeable to the general county account (*e*). [831]

Acquisition of Land.—By sect. 53 of the Highway Act, 1864 (*f*), a highway board, for the purpose of improving the highways within their district, might purchase by agreement (but not compulsorily) such lands or easements relating to lands as they required; and for this purpose improvements consisted of (1) the conversion of any road that had not been stoned into a stoned road, (2) the widening of any road, the cutting off of the corners in any road where land was required to be purchased for that purpose, levelling roads, making any new road, and building or enlarging bridges, and (3) the doing of any other work in respect of highways beyond ordinary repairs essential to placing any existing highway in a proper state of repair (*g*). These powers, by sect. 11 (1) of the L.G.A., 1888, were extended to county councils, who have the exclusive right to exercise them in rural districts by virtue of sect. 30 (1) of the L.G.A., 1929. Further county councils have power to purchase any premises (defined as any messuages, buildings, lands, easements, and hereditaments of any tenure) for the purpose of widening, opening, enlarging or otherwise improving any street (which expression includes county roads and county bridges (*h*)), or for the purpose of making any new street (similarly inclusive (*i*)), or for the improvement and development of frontages or of lands abutting on or adjacent to any such street (*k*). In practice, land will now be purchased under sect. 157 (1) of the L.G.A., 1933 (*l*), which gives county councils a general power for

(*r*) Highways and Locomotives (Amendment) Act, 1878, s. 16; 9 Statutes 173.

(*s*) L.G.A., 1929, s. 31 (4); 10 Statutes 905.

(*t*) *Ibid.*, s. 31 (3).

(*u*) Bridges on county roads are not dealt with in this article. See title BRIDGES.

(*a*) See *post*, p. 359.

(*b*) These were contained in ss. 9 and 17 of the Highway Act, 1862 (see *post*, p. 359), and are wider than those of a surveyor of highways.

(*c*) See *post*, p. 360.

(*d*) See *post*, p. 366. As to roadside wastes, see title ROADS CLASSIFICATION.

(*e*) L.G.A., 1888, s. 11 (1); 10 Statutes 693; partly repealed and re-enacted by s. 180 of the L.G.A., 1933; 26 Statutes 404.

(*f*) 9 Statutes 162. Repealed by L.G.A., 1933, except as to London.

(*g*) Highway Act, 1864, s. 48; 9 Statutes 160.

(*h*) See L.G.A., 1929, s. 30 (2), (3) and Sched. I., Part I.; 10 Statutes 904, 976.

(*i*) P.H.A., 1875, s. 154; 13 Statutes 688; L.G.A., 1929, s. 30 (1); 10 Statutes 904.

(*k*) P.H.A., 1925, s. 83; 13 Statutes 1153.

(*l*) 26 Statutes 391.

the purpose of any of their functions to acquire by agreement any land whether situate within or without the county, by way of purchase, lease or exchange (*m*). For a compulsory purchase of land, a provisional order of the M. of H. under sect. 160 of the Act of 1933 would be necessary.

Where a highway authority are authorised to construct a new road under Part II. of the Development and Road Improvement Funds Act, 1909, or an advance is made to them in respect of the improvement of an existing road, they may acquire land for the purpose of such construction or improvement, either by agreement or compulsorily (*n*). They must first endeavour to secure the land by agreement on reasonable terms, and if this cannot be done they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily (*o*). In addition to acquiring the land itself, they may also acquire immediate possession of the land by compulsory purchase of the interest of any tenant, if the land is required for the improvement of roads with a view to employing unemployed persons (*p*). [832]

Contributions to Improvements.—By sect. 11 (10) of the L.G.A., 1888 (*q*), a county council may contribute towards the cost of the maintenance, repair, enlargement and improvement of any highway or public footpath in the county although the same is not a county road (*r*). They further have power under sect. 3 of the Highways and Bridges Act, 1891 (*s*), to agree with any adjoining county council or any highway authority, in relation to the construction, reconstruction, alteration or improvement, or the freeing from tolls, of any county road or other highway (defined as including any public bridlepath or footway (*t*)), or of any bridge (including the approaches thereto), wholly or partly situate within the jurisdiction of any one or more of the parties to the agreement. Such contributions are charged as general expenses (*u*), and the proviso to sect. 3 of the Act of 1891 allowing expenses to be charged upon a parish or parishes specially benefited by the improvement seems now to be unworkable. [833]

Power to take over Ratione Tenuræ Roads.—Under sect. 62 of the Highway Act, 1835 (*a*), any person or body liable to repair a highway *ratione tenuræ* or otherwise, may obtain an order from the justices for the transfer of their liabilities to the highway authority. These provisions were re-enacted in an extended form in sect. 35 of the Highway Act, 1862 (*b*), whereby any person or corporation liable *ratione tenuræ* or

(*m*) For the general code as to acquisition of and dealings with land by a county council, see L.G.A., 1933, Part VII. ; 26 Statutes 391—404.

(*n*) Development and Road Improvement Funds Act, 1909, s. 11 ; 9 Statutes 214.

(*o*) *Ibid.*, s. 11 (5).

(*p*) Unemployment (Relief Works) Act, 1920, s. 2 ; 20 Statutes 653 ; Public Works Facilities Act, 1930, s. 4 ; 23 Statutes 774.

(*q*) 10 Statutes 695.

(*r*) Such contribution may be made subject to such conditions for the proper maintenance and repair of such highways as may be agreed upon between the county council and the recipient (L.G.A., 1894, s. 25 (3) ; 10 Statutes 794).

(*s*) 9 Statutes 192.

(*t*) Highways and Bridges Act, 1891, s. 6 ; 9 Statutes 193.

(*u*) *Ibid.*, s. 3.

(*a*) 9 Statutes 79.

(*b*) *Ibid.*, 134.

otherwise to repair any highway situate in a highway district (c), may apply to petty sessions, who may, after having given notice of the hearing both to the highway authority and the applicant, proceed to examine and determine the application to have the highway made publicly repairable, and may make an order to that effect; but if they do so, they must fix a lump sum to be paid by the party previously liable in full discharge of all future claims in respect of maintenance and repair. There is an appeal from such an order to quarter sessions, within four months. By sect. 24 of the Highway Act, 1864 (d), the highway authority may themselves apply for such an order, so that the county council may apply in respect of all roads which, if taken over, would be county roads, and by sect. 93 of the Highway Act, 1835 (e), an order to the same effect must be made with respect to such a highway by the justices in petty or special sessions, when the highway is widened, diverted or stopped up under the provisions of sects. 82-92 of that Act. See title DIVERSION AND STOPPING UP OF HIGHWAYS.

Finally the county council have power under sect. 148 of the P.H.A., 1875 (f), made applicable to county councils with respect to county roads in boroughs and urban districts, other than roads with respect to which the local council have claimed the maintenance (g) by L.G.A., 1929, sect. 31 (5) (h), to take over by agreement with any person liable to repair any such road, the maintenance, repair, cleansing, or watering of such road or part of it, upon such terms as may be agreed. [384]

Seizure of Materials for Repair of Highways.—As successors to the highway surveyors and rural district councils, the county council received any land acquired, or allotted under an inclosure award, for the purpose of quarrying materials for the repair of highways in particular parishes, and they may utilise such a quarry for the repair of highways in that parish, but probably not for other parishes in the county. Further under sect. 51 of the Highway Act, 1835 (i), they may search for, dig, get, and carry away gravel, sand, stone or other materials from waste land or common ground, or from a river or brook the bed of which is in such land, within the parish, or within any other parish if enough cannot conveniently be had in the parish where the same are to be employed leaving sufficient for the use of the roads in such other parish. They may not, in the course of such quarrying or otherwise, divert or interrupt the river or brook, or damage any building, highway or ford, or get such materials out of any river or brook within 150 feet above or below any bridge, dam, or weir, and they must not remove stones or other materials forming the sea beach, where the removal would cause any damage or injury by inundation to the lands adjoining or increased danger of encroachment by the sea (k). If sufficient

(c) So far as the county council are concerned, this means all roads which would, if not repairable *ratione tenuræ*, be county roads, as to which, see *ante*, p. 354.

(d) 9 Statutes 149.

(f) 13 Statutes 685.

(h) 10 Statutes 906.

(e) *Ibid.*, 104.

(g) See *post*, p. 365.

(i) 9 Statutes 72.

(k) Highway Act, 1835, s. 52; 9 Statutes 73. It has been held that where the powers may be legitimately exercised, the county council may blast if necessary (*Whitson v. Blairgowrie District Committee* (1897), 24 Rettie (Ct. of Sess.) 519; *R. v. Bradford, Ex parte Chambers* (1908), 72 J. P. 61; 26 Digest 356, 819; *Walker v. McGowan*, [1911] 1 I. R. 1). They may also stack materials brought on the land for a reasonable time (*Russell (Earl) v. Midhurst R.D.C.* (1908), 72 J. P. 180; 26 Digest 355, 815). S. 52 does not empower the council as surveyors to take shingle from the beach below high-water mark for the repair of the highway if it increases the risk of encroachment by the sea, and, if the beach above high-water mark is private property, a custom to take shingle therefrom to repair the parochial

material cannot be conveniently obtained from the waste lands, common grounds, rivers and brooks, the county council may apply for a licence from two justices in special sessions to take materials from inclosed lands or grounds, and such licence may be granted after the owner has been summoned to give reasons for refusing his consent (*l*). When the licence is granted, the council have the same powers in the inclosed as in the uninclosed lands, but not in a garden, yard, avenue to a house, lawn, park, paddock, or inclosed plantation, or inclosed wood not exceeding 100 acres in extent (*l*). Before application to the justices, one calendar month's written notice of the intention to do so must have been given to the owner or his known agent, and to the occupier, and either may appear and show cause against the making of the order (*m*). Under both sections compensation is to be paid, not only for the value of the materials taken, but also for damage done by carrying them away, the amount being settled by the justices in special sessions (*n*). In addition to these powers of quarrying, there is a power to gather stones lying on the surface of the land, but only, where the land is inclosed, with the permission of the owner, or the licence of two justices after notice to the owner, and compensation must be paid (*o*). Any pit or hole made in the course of the operations must be fenced off, and the fence maintained while the hole continues open (*p*). Further, if the digging operations damage any bridge, mill, building, dam, highway, occupation road, ford, mines or tin works, or other work, the county council will be liable, in addition to any civil liability, to a fine not exceeding £5 for each offence (*q*).

In addition to the powers under the Highway Act, 1835, the county council also, as highway authority for the former main roads, have certain powers which they derive as successors to highway boards (*r*). By sect. 97 of the Turnpike Roads Act, 1822 (*s*), similar powers with respect to common or waste lands, and by sect. 98 similar powers as to inclosed lands, are conferred, and there are similar provisions as to compensation, fines, and fencing and filling up of holes or pits (*t*). By sects. 10 and 11 of the Annual Turnpike Acts Continuance Act, 1870 (*u*), these powers were conferred on surveyors of highway districts with respect to roads becoming disturnpiked after August 9, 1863, and by virtue of sect. 30 (1) of L.G.A., 1929, these powers are now transferred to the county council, who have also, through the reference in sect. 11 (1)

highways is bad, as it would be a custom of *profit à prendre* in another man's land (*Pitts v. Kingsbridge Highway Board* (1871), 25 L. T. 195; 26 Digest 355, 309). Nor can a trespass be justified under a prescriptive right or custom to take stones whether adjoining to the seashore between high- and low-water mark or otherwise, for the purpose of repairing the highways of the parish (*Padwick v. Knight* (1852), 7 Ex. 854; 26 Digest 355, 307). Where shingle thrown up by the sea forms a natural barrier and protection against the encroachments and inroads of the sea, any person who wilfully removes that natural barrier so as to occasion damage to a neighbouring landowner would be guilty of a nuisance; and any one who suffered particular damage therefrom would have a right of action, or be entitled to an injunction to restrain it (*A.-G. v. Tomline* (1880), 14 Ch. D. 58; 36 Digest 187, 309; *Canvey Island Commissioners v. Preedy*, [1922] 1 Ch. 179; 36 Digest 187, 310).

(*l*) Highway Act, 1835, ss. 51, 54; 9 Statutes 72, 74.

(*m*) *Ibid.*, ss. 51, 53, 54.

(*n*) *Ibid.*, ss. 51, 54, *supra*.

(*o*) *Ibid.*, s. 51, *supra*.

(*p*) *Ibid.*, s. 55; 9 Statutes 75.

(*q*) *Ibid.*, s. 57; *ibid.*, 77.

(*r*) L.G.A., 1888, s. 11 (1); 10 Statutes 693; L.G.A., 1929, s. 30 (1); 10 Statutes 904.

(*s*) 9 Statutes 276.

(*t*) Act of 1822, ss. 97—101; 9 Statutes 276—279.

(*u*) 9 Statutes 281, 282.

of L.G.A., 1888 (a), to the powers of the highway board, the same powers with regard to all county roads. [835]

Removal of Snow or Obstructions.—By sect. 26 of the Highway Act, 1835 (b), if any impediment or obstruction arises in any highway from accumulation of snow, or from the falling down of the banks on the side of such highways, or from any other cause, it must be removed, and if notice is received from a justice, within twenty-four hours of its receipt. See title SNOW CLEARANCE. [836]

Power to Fence Highways.—A county council has power under sect. 6 of the Highway Rate Assessment and Expenditure Act, 1882 (c), to fence by posts and rails or otherwise a highway where such fencing is required for the protection of persons travelling thereon against danger. See title ROAD PROTECTION. [837]

Protection of Horse and Foot Causeways.—The county council have a duty imposed by sect. 24 of the Highway Act, 1835 (d), to secure horse causeways and foot causeways by posts, blocks or stones fixed in the ground, or by banks of earth cast up or otherwise, from being passed over and spoiled by waggons, wains, carts or carriages. [838]

Signposts, Flood Posts, Boundary Posts and Milestones.—By sect. 24 of the Highway Act, 1835, the highway authority may, and if so directed by justices must, erect stones or posts where two or more ways meet, with inscriptions thereon in large, legible letters not less than 1 inch in height showing the name of the next market town, village or other place to which the roads respectively lead. They may also erect stones or posts to mark the boundaries of the highway, such stones or posts bearing the name of the parish wherein they are situate. They must also, where parts of a highway are liable to deep or dangerous floods, erect graduated stones or posts at the several approaches or entrances thereof as considered best for the guiding of travellers in the best and safest track through the floods. Under sect. 6 of the Highway Rate Assessment and Expenditure Act, 1882 (e), they may set up, maintain and replace milestones on any highway. [839]

Footpaths and Foot-Crossings.—It is the duty of highway authorities under sect. 58 of the Road Traffic Act, 1930 (f), to provide sufficient footpaths by the side of the roads under their control, wherever they deem it necessary or desirable for the safety or accommodation of foot passengers, and to provide adequate grass or other margins by the side of such roads wherever they deem it necessary for the safety or accommodation of ridden horses and driven livestock. It is also their duty under sect. 18 of the Road Traffic Act, 1934 (g), to submit to the Minister of Transport a scheme for the establishment of crossings for foot-passengers, or a statement why they consider crossings unnecessary, and when such scheme is approved they must carry it into effect.

As to power to allow provision of means of access across the footway to private premises, see title HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO.

(a) 10 Statutes 693.

(c) *Ibid.*, 189.

(e) *Ibid.*, 189.

(g) 27 Statutes 549.

(b) 9 Statutes 63.

(d) *Ibid.*, 61.

(f) 23 Statutes 653.

The county council may plant trees or shrubs in any highway maintainable by them, and may protect them by guards or fences or otherwise, but not in such a way as to hinder the reasonable use of the highway or cause any nuisance or injury to adjoining owners and occupiers (*h*). [840]

Bye-Laws.—Under sect. 26 of the Highways and Locomotives (Amendment) Act, 1878 (*i*), a county council may make bye-laws subject to the confirmation of the M. of T., for (1) regulating the width of the tyres on vehicles drawn by animal power, and for prohibiting or regulating the use of projections on such tyres; (2) prohibiting or regulating the locking of the wheel of any such vehicle when descending a hill without the use of a skidpan; and (3) prohibiting or regulating the erection of gates across highways, and prohibiting gates opening outwards on highways. The bye-laws may provide for fines recoverable summarily, but not exceeding £2 on persons breaking them (*k*). [841]

Removal of Barbed Wire Fences.—See title BARBED WIRE.

Improvement of Line or Surface of Roads.—See titles ROAD MAKING AND IMPROVEMENT; ROAD SURFACING EXPERIMENTS.

Prevention of Structures or Growths Impairing Line of Roads.—See title ROAD MAKING AND IMPROVEMENT.

Prevention of Obstruction of Highways by Trees, Falling Soil, Surface Water, etc.—See title ROAD PROTECTION.

Provision of Refuges in Streets.—See title ROAD AMENITIES.

Provision of Cabmen's Shelters.—See title CABMEN'S SHELTERS.

Lighting Highways.—See titles LIGHTING AND WATCHING; STREET LIGHTING. [842]

Borrowing Powers.—A county council, having succeeded to the powers of a highway board (*l*), may exercise the powers of borrowing conferred by sect. 47 of the Highway Act, 1864, that is to say they may borrow for purposes of effecting improvements under that Act. But the section, which required the approval of quarter sessions, may be regarded as obsolete, the general powers of borrowing conferred by Part IX. of the L.G.A., 1933 (*m*), being wide enough to cover acquisition of land for highway purposes and any other thing which a county council have power to execute, provide or do. But any loan must be sanctioned by the M. of H. (*n*).

The M. of T. has power under sect. 8 (1) of the Development and Road Improvement Funds Act, 1909 (*o*), with the approval of the Treasury, to make advances to any highway authority in respect of the construction of new roads, or the maintenance or improvement of existing roads, or to make such advances, in conjunction with a highway authority, to any company or person. The improvements to roads in respect of which such advances can be made are (1) the widening of

(*h*) Roads Improvement Act, 1925, s. 1; 9 Statutes 219.

(*i*) 9 Statutes 181.

(*k*) S. 26 is applied to county councils by L.G.A., 1888, s. 3 (viii.); 10 Statutes 689.

(*l*) L.G.A., 1888, s. 11 (1); *ibid.*, 693.

(*m*) 26 Statutes 412–424.

(*n*) L.G.A., 1933, s. 195; *ibid.*, 412.

(*o*) 9 Statutes 212. Printed as amended by s. 4 and Sched. I. to Roads Act, 1920 (19 Statutes 85). Also amended by s. 57 of Road Traffic Act, 1930 (23 Statutes 652).

any road, the cutting off of the corners of any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair (*p*), (2) the planting, laying-out, maintenance and protection of trees, shrubs and grass margins in and beside roads, the placing on or near roads of notices, milestones and signposts, the freeing of roads from tolls, and the prescription of building and improvement lines along roads (*q*), (3) the prevention of obstruction to view at corners (*r*), and (4) the erection, lighting, maintenance, alteration and removal of footpaths and grass verges by the side of the road and places of refuge in roads, and the construction, lighting, maintenance, alteration and removal of subways under roads for the use of foot passengers, and the erection, maintenance, alteration and removal of traffic signs (*s*). Where the Minister has made an advance to a highway authority in respect of the construction of a new road, he may, if he thinks desirable, also contribute to the cost of its maintenance (*t*). Any advances made to a highway authority may be either by way of grant or by way of loan, or partly in one way and partly in the other, and upon such terms and subject to such conditions as the Minister thinks fit (*u*). The general law as to borrowing by county councils applies to any advances made by way of loan only (*a*). [843]

Expenses of County Council on Highway Functions.—The expenditure of a county council in maintaining and repairing county roads forms expenses for general county purposes, and is charged to the county fund (*b*). Capital expenditure defrayed from loans has been dealt with under the head of "Borrowing Powers." Contributions by the county council to the expenses of maintenance and repair of roads retained by the council of a non-county borough or urban district, including the footpaths, are made under sect. 33 of the L.G.A., 1929. Contributions from the M. of T. towards the expenses of county councils are dealt with under the title ROAD GRANTS. The expenses of a county council as highway authority in constructing a new road under the Development and Road Improvement Funds Act, 1909, so far as they are not defrayed out of an advance from the Minister of Transport, are ordinary highway expenses, and are to be dealt with as such, and all enactments as to such expenses, including borrowing powers, apply (*c*). [844]

Default Powers.—The county council have certain powers of enforcing the duty of repairing highways on the default of persons or bodies liable to repair.

(1) *Roads Repairable by Inhabitants at Large.*—By sect. 10 of the Highways and Locomotives (Amendment) Act, 1878 (*d*), a county

(*p*) Act of 1909, s. 8 (5); 9 Statutes 212.

(*q*) Roads Improvement Act, 1925, s. 2; 9 Statutes 220; L.G.A., 1929, s. 134; 10 Statutes 971.

(*r*) Roads Improvement Act, 1925, s. 4 (8); 9 Statutes 223.

(*s*) Road Traffic Act, 1930, s. 57 (2); 23 Statutes 653, as amended by Road Traffic Act, 1934, s. 40, Sched. III.; 27 Statutes 563, 568.

(*t*) Act of 1909, s. 8 (2); 9 Statutes 212.

(*u*) *Ibid.*, s. 8 (4); *ibid.*, 212.

(*a*) See L.G.A., 1933, Part IX.; 26 Statutes 412—424.

(*b*) L.G.A., 1888, s. 11 (1); 10 Statutes 693; L.G.A., 1929, s. 128 (1); *ibid.*, 967; L.G.A., 1933, ss. 180 (1), (3), 181 (1), 184; 26 Statutes 404—5, 406.

(*c*) Act of 1909, s. 10 (1); 9 Statutes 213.

(*d*) *Ibid.*, 170.

council (e), on complaint made that a highway authority within the county have made default in maintaining or repairing highways within their jurisdiction (f), must, if satisfied as to the default (g) by inquiry and report by the county surveyor, order the authority to perform its duty within a limited time. The section is now of course operative only where the highway is repairable by some body other than the county council. If the duty is not so performed within the time limited by the order and no sufficient cause for such default is shown, the county council may appoint a person to perform the duty and order the defaulting authority to pay the expenses of his doing so and his reasonable remuneration; the order for such payment may be removed into the High Court of Justice and enforced as an order of that court. The person appointed to do the repairs has for such purpose all the powers of the defaulting authority except that of making a rate, and he may be changed from time to time by the county council. The defaulting authority may, however, where an order is made by the county council, have their liability or otherwise to repair the road in question determined by a jury, by giving notice to the county council (h) within ten days of the service of the order that they decline to obey the order until after such determination. For the further proceedings, see sect. 10 of the Act of 1878.

Under sect. 16 (1) of the L.G.A., 1894 (i), extended to parish meetings where there is no parish council by sect. 19 (8) of the same Act (k), a parish council or parish meeting could complain to the county council that the R.D.C. had failed to maintain and repair a highway in a good and substantial manner, and the county council could thereupon take over the powers of the R.D.C. This section seems now to be inoperative.

[845]

(2) *Delegated Roads*.—If at any time a county council are satisfied on the report of the county surveyor or other person appointed for the purpose that any portion of a road in respect of which functions of maintenance, repair and improvement have been delegated by them to a borough or district council under sect. 35 of the L.G.A., 1929 (l), is not in proper repair and condition, they may cause notice to be given to that council requiring them to place the road in proper repair and condition, and may do anything which seems necessary to place the road into such proper repair and condition if their notice is not complied with within a reasonable time (m). In view of the financial control of the county council over the exercise of delegated road functions, no express provision is made as to defraying the cost. [846]

(e) In place of the former county authority (L.G.A., 1888, s. 3 (viii.)) ; 10 Statutes 689).

(f) The jurisdiction of the county council is not ousted by a denial (however *bona fide*) of the fact that the road in question is a highway (*R. v. Cheshire J.J.* (1883), 50 L. T. 483 ; 26 Digest 385, 1137), but *mandamus* will not be granted directing the county council to make an order if they are satisfied that the road is not a highway (*Ex parte Johnson* (1886), 50 J. P. Jo. 313 ; 26 Digest 385, 1138), nor if they say that they are not satisfied on the point (*R. v. Dorset County Council* (1902), 67 J. P. 19 ; 26 Digest 385, 1139).

(g) On the analogy of *R. v. Huntingdonshire County Council* (1902), County Council Times Supplement, 44, it appears that the borough or district council should be given an opportunity of being heard.

(h) In place of the clerk of the peace ; L.G.A., 1888, s. 78 (1) ; 10 Statutes 749.

(i) *Ibid.*, 788.

(k) *Ibid.*, 791.

(l) *Ibid.*, 910 ; see title DELEGATION OF HIGHWAY POWERS.

(m) L.G.A., 1929, s. 36 (1) ; 10 Statutes 911.

(3) *Roads Repairable Ratione Tenuræ*.—The county council (*n*) have power under sect. 34 of the Highway Act, 1862 (*o*), to direct their surveyor to repair highways which any person is liable to repair by reason of tenure of any land or otherwise, and which have been adjudged under sect. 19 of the same Act (*p*) to be out of repair (*q*). The expenses of such repairs must be paid by the party liable for them, and their amount may be recovered summarily.

Under sect. 25 (2) of the L.G.A., 1894 (*r*), the county council (*s*), where a highway repairable *ratione tenuræ* appears on the report of a competent surveyor (*t*) not to be in proper repair, and the person liable to repair it fails on request to place it in proper repair, may repair it and recover the expenses by action from the person liable. [847]

(B) **County Borough Councils**.—It does not appear necessary to treat the position of county borough councils at length. By sect. 34 (1) of the L.G.A., 1888 (*u*), the council of each county borough were invested with all the powers, duties and liabilities of a county council, so that they have, by virtue of sect. 11 (1) of the same Act, the same powers and are under the same duties as the former highway board, and thereby derive the powers of the surveyor of highways (*a*). They further have the powers of a district council under sect. 26 (7) of the L.G.A., 1894 (*b*), so that the council are the highway authority for every highway within the county borough and are endowed with every power possessed by every other highway authority except the Minister of Transport. Certain powers of the county council as to delegation and control of other highway authorities within the county and the enforcement of the performance of duties, are clearly inappropriate to a county borough council, but otherwise they have all the powers previously mentioned, and the powers as to rights of way and roadside wastes, dealt with *post*, p. 366. [848]

(C) **Non-County Borough and Urban District Councils**.—Each such council is the highway authority for all ordinary highways within their area, that is to say for all highways which are not classified roads.

Under sect. 144 of the P.H.A., 1875 (*c*), every borough council or U.D.C. execute the office of and are surveyors of highways, to the exclusion of any other person within their borough or district. They also exercise and are subject to all the powers, duties and liabilities conferred on the vestry by the Highway Act, 1835, or any amending Act. The council's surveyor, or any other person appointed by them, may do any ministerial acts required to be done by the surveyor of highways. A committee may be appointed by the council to deal

(*n*) As successors to highway boards; see L.G.A., 1929, s. 30 (1); 10 Statutes 904.

(*o*) 9 Statutes 134.

(*p*) *Ibid.*, 132; see Highway Act, 1864, s. 23; 9 Statutes 149.

(*q*) It may be questioned before justices, in which case the matter must be tried out by indictment before a jury at assizes (see s. 19 of the Act; 9 Statutes 132).

(*r*) 10 Statutes 794.

(*s*) As regards county roads. But a borough or U.D.C. have these powers as regards roads maintained or retained by them, and a R.D.C. have the same powers if the maintenance of the road has been delegated to them.

(*t*) Not necessarily the county surveyor.

(*u*) 10 Statutes 711.

(*a*) Highway Act, 1862, s. 17; 9 Statutes 130.

(*b*) 10 Statutes 796.

(*c*) 13 Statutes 683.

with highway matters (*d*), or two or more councils may, in cases of joint interest, appoint a joint committee (*e*).

The council of a non-county borough or urban district with a population exceeding 20,000 may claim also to exercise the functions of maintenance and repair of any county road within their borough or district. The claim must have been made before April 1, 1930, when the population already exceeded 20,000 on that day and the road was one which on that day became a county road under the provisions of the L.G.A., 1929 (*f*); or it must be made within twelve months either of (i.) the Registrar-General's preliminary report showing, on any census, that the population for the first time exceeds 20,000, if the road is a county road on that date (*g*), (ii.) the addition of an area to a non-county borough or urban district whose population already exceeds 20,000 (*h*), (iii.) the constitution of a new non-county borough or urban district, or the addition of an area to an existing non-county borough or urban district, in consequence of which the population comes to exceed 20,000 (*i*), or (iv.) the road becoming a county road after April 1, 1930, or any of the three previously mentioned dates (*j*). If maintenance is claimed, it is exercisable as from April 1, 1930, if claimed before that date, or in any other case from April 1 in the year following the calendar year in which the claim is made, except that in the case of (1) roads declared by the M. of T. to be roads towards the construction or improvement of which by the county council advances have been made under the Development and Road Improvement Funds Act, 1909, and to be roads which economy and efficiency require to remain vested in the county council, and (2) roads in a county where a local Act empowered the non-county borough or U.D.C. to relinquish functions retained by a claim under sect. 11 (2) of the L.G.A., 1888, and as to which roads the council were not exercising functions of maintenance and repair on March 27, 1929, the right to exercise the functions in both instances (1) and (2) is deferred until a date determined by the M. of T. (*k*). If the claim is duly made in the proper time, then from the appropriate date the council claiming are entitled to maintain and repair, and the road vests in them and for purposes of maintenance, repair, improvement and other dealings with the road the council have the same functions as if they were the highway authority and the road was vested in them (*l*). It will be deemed to have been made, in the absence of notification to the contrary, if the population of the non-county borough or urban district already exceeded 20,000 on April 1, 1930 (*m*). The council claiming may at any time, with the consent of the county council, relinquish these functions, and, if consent is withheld, may appeal to the Minister of Transport, and on relinquishment the functions vest in the county council as from the succeeding April 1 (*n*).
[849]

On the other hand, agreements may be made between a county council and the council of a non-county borough or urban district for maintenance by the former of any unclassified road in the area of the latter. If this is done, the road vests in the county council, and the

(*d*) L.G.A., 1933, s. 85; 26 Statutes 352.

(*e*) *Ibid.*, s. 91; *ibid.*, 355.

(*f*) L.G.A., 1929, s. 32 (2) (a); 10 Statutes 906.

(*g*) *Ibid.*, s. 32 (2) (b).

(*i*) *Ibid.*, s. 32 (2) (d).

(*k*) *Ibid.*, s. 32 (3).

(*m*) *Ibid.*, s. 32 (5).

(*h*) *Ibid.*, s. 32 (2) (c).

(*j*) *Ibid.*, s. 32 (2) (e).

(*l*) *Ibid.*, s. 32 (1).

(*n*) *Ibid.*, s. 32 (4).

two councils are in the same relative positions with regard to it as they are in the case of a county road (*o*).

As to delegation of roads, see title **DELEGATION OF HIGHWAY POWERS**.

In so far as they are highway authorities and with regard to the roads in respect of which they have powers, the council of a non-county borough or urban district have all the powers of a highway authority set out under the head of "County Councils." They further have a duty under sect. 26 of the L.G.A., 1894 (*p*), to protect all public rights of way, and to prevent as far as possible the stopping or obstruction of any such right of way, whether within their borough or district or in an adjoining area within the county, where the stoppage or obstruction would in their opinion be prejudicial to the interests of their area, and to prevent any unlawful encroachment on any roadside waste within their area (*q*). They may institute or defend any necessary legal proceedings for the purposes of this section, and any proceedings or steps taken by them in relation to any alleged right of way are not to be deemed to be unauthorised by reason only of the right of way not being found to exist. [850]

(D) **Rural District Councils**.—Rural district councils are no longer highway authorities, but as regards delegated roads (as to which see title **DELEGATION OF HIGHWAY POWERS**), they have and exercise a highway authority's powers. They also, with the consent of the county council, continue to exercise functions under sects. 39—40 and 43 of the P.H.A. Amendment Act, 1890, and sect. 47 of the P.H.A. Amendment Act, 1907, in their district, and by sect. 30 (1) of the L.G.A., 1929 (*r*), they continue to possess their former functions under sect. 26 of the L.G.A., 1894 (*s*), as respects rights of way and encroachments on roadside wastes, or any functions not being functions with respect to highways exercisable at the appointed day by rural district councils as successors to surveyors of highways or highway boards (*t*). [851]

(E) **The Minister of Transport**.—It is not proposed to deal with the powers of the Minister under this title, but he has considerable powers as a highway authority in respect of classified roads, and roads constructed by him under the Development and Road Improvement Funds Act, 1909, are repaired by him. See titles **MINISTRY OF TRANSPORT**; **ROAD MAKING AND IMPROVEMENT**; **ROADS CLASSIFICATION**. [852]

Transport Advisory Council.—This is a body set up under the Road and Rail Traffic Act, 1933 (*u*), to advise and assist the M. of T. in connection with his functions in relation to means of and facilities for transport. As to this and the London and Home Counties Traffic Advisory Committee, see titles **LONDON ROADS AND TRAFFIC** and **ROAD TRAFFIC**. [853]

Parish Councils and Meetings.—Parish councils and parish meetings are not highway authorities, but they have certain powers in connection

(*o*) L.G.A., 1929, s. 34; 10 Statutes 909.

(*p*) 10 Statutes 795.

(*q*) L.G.A., 1894, s. 26 (1); as to roadside wastes, see title **ROADS CLASSIFICATION**.

(*r*) 10 Statutes 904.

(*s*) *Ibid.*, 795.

(*t*) It is not quite clear to what functions these words refer.

(*u*) 26 Statutes 870.

with highways which it is convenient to notice under this title. Their powers in connection with diverting and stopping up highways in their parish have been dealt with under title **DIVERSION AND STOPPING UP OF HIGHWAYS**. They may also under sect. 13 (2) of the L.G.A., 1894 (a), undertake the repair and maintenance of all or any public footpaths within their parish, not being footpaths at the side of a public road, but subject to restrictions imposed on their expenditure, and further, they must not exercise their powers so as to relieve any other authority or person from duties in respect thereof. They also have power under sect. 8 (1) of the Act of 1894 (b), to provide or acquire land for public walks, and to acquire by agreement, maintain and improve any right of way within their own or an adjoining parish which will be beneficial to the inhabitants of their parish.

Where the R.D.C. fail properly to maintain and repair any highways delegated to them, or neglect to take proper proceedings in respect of any unlawful stopping up or obstruction of a public right of way within their district or an adjoining district in the same county, or in respect of an unlawful encroachment on a roadside waste within their district, a parish council may complain to the county council (c). [854]

Isle of Wight and Isles of Scilly. See these titles.

South Wales.—In South Wales, *i.e.* the counties of Glamorgan, Brecknock, Radnor, Carmarthen, Pembroke and Cardigan, there are two special Acts (d) containing special provisions as to discontinuance of maintenance of unnecessary highways, adoption of new roads, width of roads, encroachments, enforcement of duty of repair and improvement of highways. In all other respects the general law as to highways applies to these counties (e). [855]

London.—See title **LONDON ROADS AND TRAFFIC**.

(a) 10 Statutes 785.

(b) *Ibid.*, 780.

(c) L.G.A., 1894, s. 26 (4); 10 Statutes 796.

(d) South Wales Highways Act, 1860; 9 Statutes 283; and the amending Act of 1878; *ibid.*, 299.

(e) *R. v. James* (1863), 3 B. & S. 901; 26 Digest 281, 175.

HIGHWAY CODE

See ROAD TRAFFIC.

HIGHWAY DRAINS

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See also title : DITCHES.

Nature of Highway Drains.—Highway drains are alluded to in sect. 29 (2) of the L.G.A., 1929 (*a*), as drains belonging to a county road. In older times they were spoken of as ditches, drains or watercourses, for keeping the highway dry or draining the road (*b*). In sect. 67 of the Highway Act, 1835 (*c*), they are spoken of as ditches, gutters, drains or watercourses, in and through any lands or grounds adjoining or lying near to any highway. The last words are sufficiently wide to cover drains or ditches which are not part of the highway proper, and also those which are separated from it by intervening strips of land (*d*). To be a highway drain within the meaning of sect. 67, it is not necessary for the pipe to connect with a definite channel. A pipe running through a bank which divided a highway from adjoining land and discharging surface water from the highway on to such adjoining land, but not into any defined channel, was held to be a highway drain (*e*). But an overflow pipe from a catchpit taking surface and storm water from a highway, which pipe led to an irrigation gutter discharging sewage belonging to the highway authority over the adjoining owner's land, was held not to be such a drain (*f*), nor is a dumb well into which water from the highway was taken through a pipe and then percolated into the soil (*g*), or a disused gravel pit in a field connected by a line of pipes with a ditch bordering the highway (*h*). [856]

Vesting in Highway Authority.—By sect. 11 (6) of the L.G.A.,

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- (*a*) 10 Statutes 903.
 (*b*) See *e.g.* 13 Geo. 3, c. 78, s. 8 (9 Statutes 240); 1 Hawk. P. C. 76, s. 52; 1 Roll. Abr. 390; *Woodward v. Cotton* (1834), 1 Cr. M. & R. 44; 42 Digest 778, 2072.
 (*c*) 9 Statutes 83.
 (*d*) In *Tutill v. West Ham Local Board* (1873), L. R. 8 C. P. 447; 26 Digest 323, 565, it was held that where a local Act gave power to fill up ditches "at the side of" a road, this did not cover a ditch separated from the roadway by posts and rails two feet in height and over which the landowner had occasionally exercised acts of ownership. The words "adjoining or lying near to" are clearly much more comprehensive, and would cover such a case.
 (*e*) *A.-G. v. Copeland*, [1902] 1 K. B. 690; 41 Digest 46, 336.
 (*f*) *Ballard v. Leek Urban Council* (1917), 87 L. J. (Ch.) 146; 41 Digest 46, 337.
 (*g*) *Croft v. Rickmansworth Highway Board* (1888), 39 Ch. D. 272; 41 Digest 46, 334.
 (*h*) *Croysdale v. Sunbury-on-Thames U.D.C.*, [1898] 2 Ch. 515; 41 Digest 10, 73.

1888 (*i*), all drains belonging to the main roads which were vested by that section in the county council were transferred to the county council with the road, and where any sewer or other drain was used for any purpose in connection with the drainage of any such road, the county council were to be allowed to continue to use such sewer or drain. The sub-section was replaced by sect. 29 (2) of the L.G.A., 1929 (*k*), which applies to all county roads in the county (*l*) other than roads with respect to which the council of a borough or urban district have claimed functions of maintenance and repair or are deemed to have done so. By sect. 29 the county council have in respect of all such county roads, the like functions as they formerly had with respect to main roads, and all the roads, road materials and all drains belonging thereto are vested in the county council, with the addition of a declaration that where any other drain or any sewer was on April 1, 1930, used for any purpose in connection with the drainage of any such road, the county council are to continue to have the right of using the drain or sewer for such purpose. By the same section provision is made for arbitration in the event of differences arising between the county council and any other council as respects the council in whom a drain is vested, or as to the use of any drain or sewer (*m*). The effect of this section is to transfer to the county council the functions of the surveyor of highways with respect to highway drains under sects. 67 and 68 of the Highway Act, 1835 (*n*). [857]

Powers under Highway Act, 1835.—By sect. 67 of the Highway Act, 1835, the surveyor of highways had power to make, scour, cleanse, and keep open all ditches, gutters, drains, or watercourses, and also to make such trunks, tunnels, plats or bridges as he deemed necessary in and through any lands or grounds adjoining or lying near to a highway. Except where the land is waste or common, compensation for damage sustained is to be settled and paid in the same manner as under sect. 54 of the same Act in the case of damage by getting materials in inclosed lands (*o*).

An opinion of the Law Officers of the Crown was given in 1865 (*p*), that the effect of this section was “to empower, but not compel, the (surveyor or) highway board to cleanse ditches in a more effectual manner than landowners could be compelled to cleanse them; and that if the materials taken out are claimed by the landowner, he is entitled to them. . . .” In order, however, to avoid disputes on the subject, the Law Officers thought it prudent that notice should be given to the adjoining occupiers to cleanse the ditches and that the powers of the Act should only be resorted to if the occupiers did not comply. They pointed out that at common law the owner of lands adjoining a highway is under a duty to cleanse and scour his own ditches to such an extent as to prevent nuisances or obstruction to passengers, but this duty can only be enforced by indictment (*q*). [858]

(*i*) 10 Statutes 694, since repealed by L.G.A. 1929.

(*k*) *Ibid.*, 903.

(*l*) As to what are county roads, see title HIGHWAY AUTHORITIES, at pp. 354, 355, *ante*.

(*m*) L.G.A., 1929, s. 29 (3); 10 Statutes 903.

(*n*) 9 Statutes 83.

(*o*) *Ibid.*, 74.

(*p*) See 29 J. P. 319. The Law Officers in question were Sir ROUNDELL PALMER, Q.C. (afterwards Lord SELBORNE, L.C.) and Sir ROBERT COLLIER, Q.C. (afterwards Lord MONKSWELL).

(*q*) There is authority for the statement that at common law it was the duty of the adjoining owner or occupier to cleanse the ditches in Bacon Abr. Highway D.; and see *A.-G. v. Waring* (1899), 63 J. P. 789; 26 Digest 387, 1154.

Use of Drains for Draining Highways.—The highway authority as successors to the surveyor of highways (r) have thus a control over and an interest in the drains laid for carrying off water from the highway, and so long as their powers are exercised *bona fide*, are not guilty of wilful or malicious damage. The owner of the adjoining lands has only a qualified property in the drains, etc., subject to the exercise by the surveyor of his control over them (s). In *A.-G. v. Copeland* (t), where the pipe was stopped up by the owner of the adjoining land, it was held that in view of the length of time during which the drain had been used, a legal origin ought to be presumed for the right claimed of passing water through the drain, and that the owner's act was wrongful, an injunction being granted restraining him from continuing the obstruction. But in *Ballard v. Leek Urban Council* (u), it was held that the overflow pipe was not such a gutter or drain as is covered by sect. 67 of the Act of 1835, and that the adjoining owner was entitled to deal with it as her own property and to obstruct or remove it without the consent or authority of the U.D.C. In *Croft v. Rickmansworth Highway Board* (a) where it was held that a dumb well was not a highway drain, it was also held that accordingly such a well could not be made or used by the highway authority in lands adjoining the highway; and in *Croysdale v. Sunbury-on-Thames U.D.C.* (b), which related to a disused gravel pit, it was held that the highway authority had no power under the section to discharge water from the road into the pit, and were not entitled to enter upon the field in order to keep open the existing drain, or to make any other for the same purpose. In the last case, STIRLING, J., said, "This section, however widely construed, only authorises the making and keeping open of ditches and drains in and through lands adjoining a highway, and does not authorise the discharge of the contents of any ditch or drain on such lands." The position is that while under the section the highway authority may keep all highway drains efficient, they do not acquire powers to use other persons' land except by taking it for drainage purposes and paying compensation. In *Thomas v. Gower R.D.C.* (c), the council diverted a large quantity of water which formerly flowed over the highway and thence down a watercourse, so that it flowed over adjoining land but without making any sort of channel in such adjoining land, and it was held that they had no power so to act. [859]

The modern road is more impervious to water than the highway as it existed in 1835, and the widening of highways has also sensibly increased the volume of water to be disposed of by drainage. Outlets which formerly were sufficient thus became inadequate in a wet season, and while sect. 29 of the L.G.A., 1929, gives a county council as the highway authority a right of continuing to use existing drains and sewers, it would seem that the cost of any enlargement made necessary by an increase of the flow of water from a county road must be borne by the county council. In addition, care must be taken that land at the outlet of the drain or sewer is not flooded, or the action of the county council

(r) See L.G.A., 1888, s. 11 (1); 10 Statutes 693, and L.G.A., 1929, s. 29 (2); 10 Statutes 903.

(s) See *Denny v. Thwaites* (1876), 2 Ex. D. 29; 26 Digest 450, 1660.

(t) [1902] 1 K. B. 690; 41 Digest 46, 336.

(u) (1917), 87 L. J. (Ch.) 146; 41 Digest 46, 337.

(a) (1888), 39 Ch. D. 272; 41 Digest 46, 334.

(b) [1898] 2 Ch. 515; 41 Digest 10, 73.

(c) [1922] 2 K. B. 76; 41 Digest 47, 338.

will be liable to be questioned on the authority of *Thomas v. Gower R.D.C.* and other cases already mentioned.

Apart from questions of the right to drain surface water from a highway, further points arise when the surface water is impregnated with sewage or other noxious matter. In *Durrant v. Branksome U.D.C.* (d), it was held that surface water from a highway conveyed by surface sewers may be discharged into any natural stream or watercourse, or into any canal, pond or lake within the area of the local authority by virtue of their powers under ss. 15—17 of the P.H.A., 1875 (e), notwithstanding that it also carries down sand and silt. But in *Dell v. Chesham U.D.C.* (f), where surface water had long drained from a road into a river through adjoining watercress beds, and tar on the roads spread to allay dust was broken up by frost, thus causing water impregnated with tar acid to destroy the watercress, it was held that the road water was noxious matter, and that, while the council had power to spray the road with tar, they could not justify the damage done unless they could show that it was a necessary consequence of the exercise of the power. In *Pearce v. Croydon R.D.C.* (g), a highway authority permitted the surface drainage from roads in their area to flow across adjoining land, and claimed the right to do so on the ground (1) that there was a watercourse across the land, or (2) that there was a sewer which ran across the land into which they were entitled to discharge the water in question. The only evidence was that from time immemorial there had been "bourne flows" of underground water from the chalk, which had on various occasions flooded the land and followed the channel of the alleged watercourse or sewer, and it was held upon the facts that such a flow was neither a watercourse nor a sewer. In *Maxwell-Willshire v. Bromley R.D.C.* (h), it was held that a natural flow of water in a defined natural channel is a natural stream or watercourse within the meaning of sect. 17 of the P.H.A., 1875 (i), notwithstanding that owing to physical or geological conditions in the lower part of its course it burrows into, or is gradually absorbed by, the land. [860]

Difference between Highway Drain and Sewer.—A previously existing highway drain did not, on the passing of the L.G.A., 1894, become a sewer within the meaning of the P.H.A., 1875, by reason of its becoming vested under sect. 25 of that Act (k) in an R.D.C. who were both highway authority and sanitary authority (l), and a drain "belonging to a main road" within sect. 11 (6) of the L.G.A., 1888 (m), vested in a county council, did not become such a sewer and vest in the sanitary authority

(d) [1897] 2 Ch. 291; 41 Digest 21, 161.

(e) 13 Statutes 632—3. Under the last of these sections sewage or filthy water may not be conveyed by any sewer, drain or outfall into any natural stream, watercourse, canal, pond or lake until it has been freed from all excrementitious or other matter which would affect or deteriorate the purity and quality of the water therein, and the decision really turned on whether water containing sand and silt was "sewage or filthy water" within the meaning of this section. It was held that it was not, and that consequently the section imposed no prohibition.

(f) [1921] 3 K. B. 427; 26 Digest 408, 1290.

(g) (1910), 74 J. P. 429; 41 Digest 8, 53.

(h) (1917), 87 L. J. (Ch.) 241; 41 Digest 31, 227.

(i) 13 Statutes 633.

(k) 10 Statutes 794.

(l) *Williamson v. Durham R.D.C.*, [1906] 2 K. B. 65; 41 Digest 7, 42. The principle of this decision would not be limited to an R.D.C.: see definition of "sewer" in s. 4 of the P.H.A., 1875; 13 Statutes 625.

(m) 10 Statutes 694.

merely by some unauthorised connection being made between a house and the drain (*n*). A pipe laid by an adjoining owner for his own protection to carry off surface water from the highway and prevent it flowing on to his premises, being used for rainwater only, is not converted into a sewer within the P.H.A., 1875, by another owner discharging sewage into it (*o*). But a channel or gutter at the side of a road, which drained the surface water from the roadway and into which rain-water pipes and the roofs and curtilages of twenty adjoining houses drained, was held to be such a sewer (*p*). Each of these decisions turned on the particular facts, and the question whether a given drain is a highway drain vested in the county council, or is a sewer vested in the borough or district council as the sanitary authority, is often very uncertain. Difficulties frequently arise through the surreptitious connection of premises built along a road with a drain constructed primarily for the drainage of the road.

In *Irving v. Carlisle R.D.C.* (*g*) public carriage roads and allotments had been set out under an inclosure award, in which there was a provision that each allotment holder should discharge the water from his allotment on to the adjoining allotment. In an action brought by the occupier of lands adjoining one of the roads so set out against the highway authority for failing to cleanse and keep in repair a ditch on the highway, whereby his fields were damaged, it appeared that the council had not cleaned out the ditch, and had cut grips from the highway into the ditch and cleaned them out from time to time; also drainage from two cottages on the other side of the highway passed under it through a culvert into the ditch. It was held that the road was not an allotment under the award, and that therefore the council were not bound to carry off the water from the ditch under the award; that the council were not guilty of misfeasance but only of non-feasance; and that even if the cottages had not been within the same curtilage, the ditch was not a sewer to which the P.H.A., 1875, applied. [861]

Interference with Drains.—The owners and occupiers of adjoining lands and all other persons are prohibited by sect. 68 of the Highway Act, 1835 (*r*), from altering, obstructing or in any manner interfering with any ditches, gutters, drains, watercourses, trunks, tunnels, plats or bridges made or maintained by the highway authority under sect. 67 of the same statute. On a contravention of sect. 68, the person interfering may be called upon to pay the cost of re-instatement, and is liable to a fine not exceeding three times the cost. [862]

London.—See LONDON ROADS AND TRAFFIC.

(*n*) *Richarby v. New Forest R.D.C.* (1910), 26 T. L. R. 586; 41 Digest 7, 44.

(*o*) *Wincanton R.D.C. v. Parsons*, [1905] 2 K. B. 34; 41 Digest 6, 35.

(*p*) *Wilkinson v. Llandaff and Dinas Powis R.D.C.*, [1903] 2 Ch. 695; 41 Digest 7, 40.

(*g*) (1907), 71 J. P. 212; 41 Digest 7, 43.

(*r*) 9 Statutes 83.

HIGHWAY NUISANCES

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See also titles :

ANIMALS KEEPING OF ;
BARBED WIRE ;
BETTING ;
BICYCLES ;
BREAKING UP OF ROADS ;
CATTLE ON HIGHWAYS ;
CHIMNEYS ;
DANGEROUS BUILDINGS ;
DITCHES ;
EXPLOSIVES ;
FIREWORKS AND FIREARMS ;
LEVEL CROSSINGS ;
LIGHT RAILWAYS ;
NOISE ;
NUISANCES ;
OBSTACLES ON HIGHWAYS ;
OFFENSIVE BEHAVIOUR ;
OVERHEAD WIRES ;

PROCESSIONS ;
PROJECTIONS OVER HIGHWAYS ;
QUARRIES AND MINE SHAFTS ;
REPAIR OF ROADS ;
RIFLE RANGES ;
ROAD PROTECTION ;
ROAD TRAFFIC ;
ROADS CLASSIFICATION ;
ROUNDBABOUTS ;
SMOKE ABATEMENT ;
SNOW CLEARANCE ;
SUBSIDENCE ;
TRAMWAYS ;
TRAPS ;
TREES AND HEDGES ;
UNREASONABLE AND EXCESSIVE USE OF
HIGHWAY.

N.B.—Many matters which are highway nuisances are dealt with under the above specific headings, and not in this article at all. A number of miscellaneous matters which are highway nuisances, *e.g.* cellar flaps, coal shafts, fences, gates, gratings, machinery, overhanging

trees, prevention of soil, water and rubbish falling on the highway, and quarries, are dealt with in the general title ROAD PROTECTION.

INTRODUCTORY

Nuisance (*a*) has been defined with reference to highways, as any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along the highway (*b*). It has also been defined as anything which prevents the convenient use of the way by passengers (*c*), and as an offence against the public, either by doing a thing which tends to the annoyance of all subjects of the Crown, or by neglecting to do a thing which the common good requires (*d*). In order to amount to such a nuisance the matter complained of must contain the usual three essential elements, (1) that the act or omission which contributes to or causes the alleged nuisance must be wrongful, either *per se*, or as being in excess of statutory powers, or as being an unreasonable exercise of rights otherwise legal having regard to the circumstances; (2) that the interference with the enjoyment of the public or private right to the use of the highway must be prejudicial, causing some damage or loss; and (3) that it must be substantial, and not either trivial or fanciful in character, or temporary or evanescent in its continuance.

The duty of highway authorities in the protection of roads and the prevention and removal of obstacles and nuisances are dealt with in the title ROAD PROTECTION. It is important, however, to bear in mind that a highway authority cannot, in the absence of an express power, authorise an obstruction of or an encroachment on a highway. If a consent to such an obstruction or encroachment is given, this does not legalise it (*e*), unless the authority are authorised by statute to give their consent to what, without statutory powers, would be a nuisance. Thus if the authority have power to break up streets for the lighting of their borough or district, and have further power to contract for the lighting of the streets, they may authorise a gas company who have no statutory powers to break up the streets (*f*).

In *Harekins v. Robinson* (*g*), a gas company, not possessed of statutory powers, obtained the licence of a local board acting under the P.H.A., 1848, to break up the streets in order to supply the inhabitants with gas. The manager of the company was convicted under sect. 72 of the Highway Act, 1835 (*h*), for causing injury and damage to the highway, and it was held that the licence of the board was no defence.

Similarly, in the case of navigable rivers, which are in law a species of

(*a*) For general principles of the law of Nuisance, see title NUISANCE.

(*b*) Pratt and Mackenzie, *Law of Highways* (18th ed.), p. 107.

(*c*) *R. v. Mathias* (1861), 2 F. & F. 570; 26 Digest 448, 1641, *per* BYLES, J.

(*d*) Bacon's Abridgment, title "Nuisance."

(*e*) *R. v. United Kingdom Electric Telegraph Co., Ltd.* (1862), 2 B. & S. 647, n.; 26 Digest 313, 452; *R. v. Train* (1862), 3 F. & F. 22; 26 Digest 414, 1332; *Harvey v. Truro R.D.C.*, [1903] 2 Ch. 638; 26 Digest 313, 454; *Harekins v. Robinson* (1872), 37 J. P. 662; 26 Digest 420, 1396; *Preston Corpn. v. Fulkwood Local Board* (1885), 53 L. T. 718; 26 Digest 440, 1573; *A.-G. v. Barker* (1900), 83 L. T. 245; 26 Digest 414, 1334. Nor will any lapse of time justify a nuisance (*Harvey v. Truro R.D.C.*, *supra*).

(*f*) *A.-G. v. Cambridge Consumers Gas Co.* (1868), L. R. 6 Eq. 282; 26 Digest 451, 1664.

(*g*) (1872), 37 J. P. 662; 26 Digest 420, 1396. See also *R. v. Burt* (1870), 11 Cox, C. C. 399; 26 Digest 414, 1337.

(*h*) 9 Statutes 86; see *post*, pp. 378, 391 *et seq.*

highway (*i*), the conservators of such a river cannot authorise the construction of a wharf which causes inconvenience to the public in exercising their right of navigation (*k*). [863]

Descriptions of Nuisance.—The nuisances of most frequent occurrence are erections and excavations upon or adjoining the highway, and excessive and unreasonable user of the highway. Nuisances caused by non-repair of the highway are dealt with under title REPAIR OF ROADS.

It is a nuisance to dig a ditch or make a hedge across the highway, or to erect a new gate, or to lay logs of timber in it, or, generally, to do any other act which will render it less commodious, and it is no excuse for him who lays logs in the highway that he laid them only here and there, so that people might have a passage through them by winding and turning (*l*). It is no defence that the part of the highway obstructed is one not habitually or ordinarily used for passage, or that sufficient space is left for traffic (*m*). Nor is it any defence to say that the obstructed highway is only a *cul-de-sac* which is of little utility to the public (*n*), or that the obstruction is of public benefit (*o*). [864]

NUISANCE BY ENCROACHMENT

General Principle.—Any wrongful erection which narrows the highway, or renders it less commodious to the public, is unlawful, and constitutes a public nuisance at common law, provided that the encroachment is an appreciable one. A verdict by a jury that there had been an encroachment, but that it was inappreciable, was held to amount to a verdict of not guilty (*p*). No lapse of time will justify an encroachment or prevent an indictment lying at any time (*q*). In *R.*

(*i*) *Orr Ewing v. Colquhoun* (1877), 2 App. Cas. 839; 26 Digest 316, 485; *Anon.* (1808), 1 Camp. 517, n.; 25 Digest 38, 353; *Original Hartlepool Collieries Co. v. Gibb* (1877), 5 Ch. D. 713; 26 Digest 426, 1447; *Rose v. Miles* (1815), 4 M. & S. 101; 36 Digest 212, 553; *R. v. Hammond* (1717), 10 Mod. Rep. 382; 26 Digest 262, 24; *Colchester Corp'n. v. Brooke* (1845), 7 Q. B. 339; 44 Digest 106, 844; *Dimes v. Pelley* (1850), 15 Q. B. 276; 26 Digest 448, 1639; *The Swift*, [1901] P. 168; 44 Digest 108, 863; *Gann v. Free Fishers of Whitstable* (1865), 11 H. L. Cas. 192; 44 Digest 86, 684; *Ball v. Herbert* (1789), 3 Term Rep. 253; 26 Digest 262, 34.

(*k*) *R. v. Lord Grosvenor* (1819), 2 Stark. 511; 44 Digest 119, 961; and see *R. v. Hollis* (1819), 2 Stark. 536; 15 Digest 702, 7583.

(*l*) *Bac. Abr. Highway D.*; *Hawkins' P. C.*, c. 76, ss. 48, 49; 2 Roll. Abr. 137. If a new gate is erected across a highway, it is a nuisance even though not fastened (*James v. Hayreard* (1630), Cro. Car. 184; 26 Digest 419, 1381), and, in cases where the gate is locked, even though keys are provided (*Guest's Estates, Ltd. v. Milner's Safes, Ltd.* (1911), 28 T. L. R. 59; 26 Digest 419, 1382). This applies to a post erected in a footway (*Lamley v. East Retford Corp'n.* (1891), 55 J. P. 133; 26 Digest 390, 1171); but cf. *Great Central Rail. Co. v. Hewlett*, [1916] 2 A. C. 511; 26 Digest 419, 1383, where statutory authority for the continuance of the post was subsequently obtained.

(*m*) *R. v. United Kingdom Electric Telegraph Co., Ltd.* (1862), 31 L. J. (M. C.) 166; 26 Digest 313, 452; *Offin v. Rochford Rural Council*, [1906] 1 Ch. 342; 26 Digest 313, 455.

(*n*) *R. v. Burney* (1875), 31 L. T. 828; 26 Digest 264, 46.

(*o*) *R. v. Ward* (1836), 4 A. & E. 384; 36 Digest 241, 797; *R. v. Train* (1862), 2 B. & S. 640; 26 Digest 419, 1387; *R. v. Morris* (1830), 1 B. & Ad. 441; 26 Digest 419, 1385; *A.-G. v. Terry* (1874), 9 Ch. App. 423; 44 Digest 121, 971; disapproving *R. v. Russell* (1827), 6 B. & C. 566; 44 Digest 119, 957.

(*p*) *R. v. Leprie* (1866), 30 J. P. Jo. 723; S. C. sub nom. *R. v. Lepine*, 15 L. T. 158; 26 Digest 446, 1631; *R. v. Bartholomew*, [1908] 1 K. B. 554; 26 Digest 446, 1632; and see *R. v. Russell* (1854), 3 E. & B. 942; 26 Digest 446, 1629.

(*q*) *R. v. Cross* (1812), 3 Camp. 224; 26 Digest 425, 1445; *Weld v. Hornby* (1806), 7 East, 199; 25 Digest 33, 322; *Chad v. Tilsed* (1821), 2 Brod. & B. 403; 44 Digest 75, 560; *R. v. Edwards* (1846), 11 J. P. 602, n.; 26 Digest 441, 1583; and see *Vooght v. Winch* (1819), 2 B. & Ald. 662; 44 Digest 119, 960.

v. *Edwards* (r) an encroachment had existed for forty years, but the wrongdoer was convicted. A railway company were empowered by statute to divert and otherwise alter roads, but the Act provided that if it was found necessary to make a road impassable or inconvenient, the company should before doing so substitute a proper and convenient road as close at hand as possible. It was held that the company having encroached on an old road without making a new one, were indictable for a nuisance, and that it was no defence to say that the soil was such as to render it impracticable to make a new road (s). As to encroachment on roadside wastes, see title ROAD PROTECTION. [865]

Provisions of Highway Acts.—The Highway Acts, 1835 and 1864, contain special provisions dealing with encroachments. Sect. 69 of the Highway Act, 1835 (t), provides that if a person encroaches by making any building, hedge, ditch or other fence on a carriageway or cartway within fifteen feet from its centre, such person shall be liable on summary conviction to a fine not exceeding 40s.; and the highway authority as successors of the surveyor are to cause such buildings, hedges, ditches or fences to be taken down, or filled up, at the expense of the person to whom the same belong; and justices in petty sessions may upon proof to them of the facts levy the expenses of taking down the buildings, hedges, or fences or filling up the ditches, as well as the penalties imposed, by distress and sale of the offender's goods and chattels. [866]

By sect. 51 of the Highway Act, 1864 (u), it is provided that persons encroaching on a carriageway or cartway by making thereon any building, or pit, or hedge, ditch, or other fence, or by placing any dung, compost, or other materials for dressing land, or any rubbish, on its sides within fifteen feet of the centre, or by removing any soil or turf from its sides except for the purpose of improving the road, and by order of the highway authority, shall be subject on summary conviction to a fine not exceeding 40s., notwithstanding that the whole space of fifteen feet from the centre of such carriageway or cartway has not been maintained with stones or other materials used in forming highways; and justices in petty sessions, upon proof to them made upon oath, may levy the expenses of taking down such building, hedge, or fence, or filling up such ditch or pit, and removing such dung, compost, materials, or rubbish, or restoring the injury caused by the removal of such soil or turf, upon the person offending. But where any such carriageway or cartway is fenced on both sides, no encroachment is to be allowed whereby the carriageway or cartway will be reduced in width to less than thirty feet between the fences on each side. [867]

The power of removing obstructions granted by sect. 69 of the Highway Act, 1835, is limited to the obstructions mentioned, and also to such obstructions as are on the carriageway or cartway within fifteen feet from the centre of it, and by sect. 63 (a) of the same Act that portion of ground was to be deemed and taken to be the highway which had been maintained by the surveyor as highway, and repaired with stones or other materials used in forming highways, for the six months immediately preceding. The centre of a highway is defined by the same section to be the middle of such highway, where, a line being drawn along the highway or a point marked, an equal number of feet of highway which have been so maintained and repaired as aforesaid for twelve months before

(r) (1846), 11 J. P. 602, n.; 26 Digest 441, 1583.

(s) *R. v. Scott* (1842), 3 Q. B. 543; 26 Digest 445, 1626.

(u) *Ibid.*, 161.

(a) *Ibid.*, 80.

(t) 9 Statutes 84.

is found on each side of such line or mark. It was, therefore, held that the surveyor (*b*) could not, under sect. 69, pull down a fence which an adjoining owner had put upon a piece of uninclosed land by the side of a road nine feet wide, which piece of land was also nine feet wide, but was so rough and uneven that no carriage ever used it (*c*); and in *Chapman v. Robinson* (*d*) it was held that the erection of a building within fifteen feet of the centre of a carriageway which had been repaired by the surveyor for the six months preceding, but not on any part of the highway which had been lately used for passage, was not an encroachment of which the justices could take summary cognisance under the section. [868]

Under sect. 51 of the Highway Act, 1864 (*e*), the encroachment must be on the sides of the carriageway, that is, on the part of the ground which has been dedicated as a highway (*f*). In *Thorne v. Field* (*g*) it was held that defendant could not be convicted of having put up a fence within seven feet of the centre of the highway on the side of a ditch over which he had exercised rights of ownership for many years without interference from the highway authorities. The justices may decide whether the site of the obstruction is part of the highway, and a conviction cannot be set aside on *certiorari* (*h*). It is no defence to an information under sect. 51 to allege that the encroachment is only a temporary wire fence put up to protect a newly planted hedge, and where the justices dismissed the information on these grounds, on an undertaking by the defendant to remove the fence within five years, it was held that they were wrong in so doing (*i*). The surveyor ought not to exercise his power of removing encroachments under sect. 69 of the Highway Act, 1835, without first giving the offender an opportunity of showing cause against the removal (*k*). An encroachment is not a continuing offence under the above sections, and the six months' limit of time under the Summary Jurisdiction Act, 1848, runs from the date of the erection which constitutes the encroachment (*l*). For this purpose the material date may not be the completion of the erection, but may be an earlier date when the encroachment became a substantial one (*m*). [869]

NUISANCE BY INTERFERENCE WITH SOIL OF HIGHWAY

It is a public nuisance for any person or company of persons to break up streets for the purpose of laying pipes, making a tramroad, etc., unless they possess Parliamentary powers, and they may be either

(*b*) The highway authority in respect of the particular road (see title HIGHWAY AUTHORITIES) has succeeded to the powers, duties and liabilities of the surveyor.

(*c*) *Evans v. Oakley* (1843), 1 C. & K. 125; 26 Digest 435, 1529.

(*d*) (1858), 28 L. J. (M. C.) 30; 26 Digest 435, 1530. See also *Lowen v. Kaye* (1825), 4 B. & C. 3; 26 Digest 435, 1528. To meet the decision in *Chapman's Case* s. 51 of the Highway Act, 1864, was passed.

(*e*) 9 Statutes 161.

(*f*) *Easton v. Richmond Highway Board* (1871), L. R. 7 Q. B. 69; 26 Digest 435, 1536.

(*g*) (1869), 33 J. P. 727; 26 Digest 435, 1531.

(*h*) *R. v. Bradley* (1894), 58 J. P. 199; 26 Digest 435, 1532.

(*i*) *Clarson v. Arnold* (1890), 54 J. P. 630; 26 Digest 435, 1533.

(*k*) See *Cooper v. Wandsworth District Board of Works* (1863), 14 C. B. (N. S.) 180; 26 Digest 518, 2202; *Masters v. Pontypool Local Government Board* (1878), 9 Ch. D. 677; 26 Digest 563, 2573; *Hopkins v. Smethwick Local Board of Health* (1890), 24 Q. B. D. 712; 26 Digest 564, 2584.

(*l*) *Coggins v. Bennett* (1877), 2 C. P. D. 568; 26 Digest 459, 1757; *Ranking v. Forbes* (1869), 34 J. P. 486; 26 Digest 459, 1756.

(*m*) See *Hyde v. Entwistle* (1884), 49 J. P. 517; 26 Digest 459, 1758.

indicted, or restrained by injunction from interference with the street (*n*).

As to the interference with roads by railways, see titles LEVEL CROSSINGS; TRAMWAYS; and LIGHT RAILWAYS.

For the powers conferred on various authorities to interfere with roads for the purpose of their undertakings, see title BREAKING UP OF ROADS. A person or company having no statutory power to break up streets cannot justify interference with the soil thereof by setting up a licence of the local authority for his acts, unless the authority have themselves power to break up streets for the purpose (*o*). Interference with the highway cannot be justified at common law as an exercise of rights necessarily incidental to the enjoyment of his property by an adjoining occupier or owner, *e.g.* he could not make a new hole in the middle of the street to communicate with his coal cellar (*p*).

The laying down of a tramway upon and along a public highway, without statutory powers, is a nuisance, and cannot be justified on the ground that it is a benefit to the public (*q*).

The erection of telegraph posts without authority on a public highway is a nuisance, even though the posts are placed on a part of the highway not ordinarily used by the public, and although they leave sufficient space for public traffic (*r*).

If a company have unlawfully disturbed the surface of a public street and laid down wires, the road authority cannot maintain an action for a mandatory injunction to compel the company to remove their pipes and wires, because there is no continuing trespass upon or interference with the rights of the authority (*s*). [870]

Failing properly to reinstate the soil of a highway after lawfully disturbing it is a public nuisance if the highway is thereby made dangerous or inconvenient (*t*). It is a nuisance if stones are laid during reinstatement so as to give an appearance of security, when they are in fact unsafe (*u*). It is sufficient to found an action of nuisance if the default is that of a servant of the defendant (*a*), or a contractor employed by him, if the nuisance is necessarily created by the work for which he is employed (*b*), but not if the contractor employs a sub-contractor to do work which can be done in a lawful manner and the sub-contractor unnecessarily does it in a manner which causes a public nuisance (*c*).

Negligence in guarding a heap of earth and stones removed in

(*n*) *A.-G. v. Cambridge Consumers Gas Co.* (1868), L. R. 6 Eq. 282; 26 Digest 451, 1664; *R. v. Longton Gas Co.* (1860), 29 L. J. (M. C.) 118; 26 Digest 444, 1618; *R. v. Train* (1862), 2 B. & S. 640; 26 Digest 419, 1387; *R. v. Morris* (1830), 1 B. & Ad. 441; 26 Digest 419, 1385; *R. v. Charlesworth* (1851), 16 Q. B. 1012; 26 Digest 414, 1336; *Goodson v. Richardson* (1874), 9 Ch. App. 221; 26 Digest 326, 538.

(*o*) See *ante*, p. 374.

(*p*) *R. v. Longton Gas Co.*, *supra*.

(*q*) *R. v. Train*, *supra*; *R. v. Morris*, *supra*; and see *R. v. Charlesworth*, *supra*.

(*r*) *R. v. United Kingdom Electric Telegraph Co., Ltd.* (1862), 31 L. J. (M. C.) 166; 26 Digest 318, 452.

(*s*) See *Battersea Vestry v. County of London and Brush Provincial Electric Lighting Co., Ltd.*, [1899] 1 Ch. 474; 26 Digest 328, 602.

(*t*) *Goodson v. Sunbury Gas Consumers' Co., Ltd.* (1896), 60 J. P. 535; 26 Digest 421, 1402.

(*u*) *Drew v. New River Co.* (1834), 6 C. & P. 754; 26 Digest 421, 1401.

(*a*) *Sadler v. Henlock* (1855), 4 E. & B. 570; 26 Digest 420, 1391; *Matthews v. West London Water Works Co.* (1813), 3 Camp. 403; 26 Digest 420, 1393.

(*b*) *Ellis v. Sheffield Gas Consumers Co.* (1853), 2 E. & B. 767; 26 Digest 421, 1400.

(*c*) *Peachey v. Rowland* (1853), 13 C. B. 182; 26 Digest 421, 1403.

disturbing the highway (*d*), or leaving materials so that the highway is rendered narrower and more dangerous (*e*), gives a right of action to a person injured.

In *A.-G. v. Conduit Colliery Co.* (*f*), where the defendants worked their coal mines in a proper manner beneath a highway so as to cause a uniform subsidence, and a railway company who had constructed a railway on the level across the highway placed ballast under the line to maintain its level, whereby obstruction was caused to the highway, it was held that the colliery company were not liable in damages to the local authority for the obstruction. But if subsidence of a road occurs owing to defective reinstatement by a water company after breaking it up under statutory powers, and, through mere passive omission by the highway authority to have the same made good an accident occurs, the water company continue liable (*g*). [871]

Proceedings for obstruction in interfering with highways should be taken against the persons making it (*A.-G. v. Conduit Colliery Co.*, *supra*). Sect. 72 of the Highway Act, 1835 (*h*), provides for the summary punishment of offenders injuring or unlawfully affecting the soil of the highway. See *post*, under the head "Miscellaneous Nuisances under sect. 72 of Highway Act, 1835."

An authority who have power to break up streets for the purpose of paving, cleansing and lighting have power to break them up for an improved method of lighting which was not even known at the time when their statutory powers were conferred (*i*).

If a council who are subject to the liabilities of surveyors of highways cause to be dug materials for the highway in such a manner as to damage, *inter alia*, any bridge or highway, they are liable to penalties, notwithstanding any liability to a civil action on the part of the person damaged (*k*). [872]

Bye-Laws for Preservation of Highways.—A county council have power to make bye-laws, subject to confirmation by the M. of T., for prohibiting or regulating the use of waggons, etc., drawn by animal power, so as to ensure their having wheels, etc., of such width in proportion to the weight and character of the waggons, etc., for prohibiting or regulating the use of the like waggons, etc., not having the nails on their wheels countersunk as required by the bye-laws, or having projections thereon forbidden by such bye-laws; for prohibiting or regulating the locking of the wheel of such waggon, etc., when descending a hill, unless there is placed at the bottom of such wheel a skidpan, slipper, or shoe to protect the road (*l*). [873]

NUISANCE BY ATTRACTING CROWDS

A person who causes a crowd to collect together on the highway to the annoyance of the neighbours is guilty of creating a public nuisance,

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- (*d*) *Ellis v. Sheffield Gas Consumers Co.* (1853), 2 E. & B. 767; 26 Digest 421, 1400.
 - (*e*) *Shoreditch Corpn. v. Bull* (1904), 90 L. T. 210; 26 Digest 421, 1404.
 - (*f*) [1895] 1 Q. B. 301; 26 Digest 421, 1406, and see title SUBSIDENCE.
 - (*g*) *Hartley v. Rochdale Corpn.*, [1908] 2 K. B. 594; 26 Digest 421, 1405.
 - (*h*) 9 Statutes 86.
 - (*i*) *A.-G. v. Cambridge Consumers Gas Co.* (1868), L. R. 6 Eq. 282; 26 Digest 451, 1664. See also *Bishop v. North* (1843), 11 M. & W. 418; 11 Digest 109, 54; *Dand v. Kingscote* (1840), 6 M. & W. 174; 34 Digest 716, 1007.
 - (*k*) Highway Act, 1835, s. 57; 9 Statutes 77.
 - (*l*) Highways and Locomotives (Amendment) Act, 1878, s. 26; 9 Statutes 181. See also titles ROAD PROTECTION; ROAD TRAFFIC.

if such collection be the probable consequence of his act, even though it be not its actual object (*m*). So where a person converted his premises, near a public highway, into a ground for shooting pigeons, and as a result persons collected in the vicinity to shoot at stray birds, causing great noise and disturbance and doing mischief by the shot, it was held that the evidence supported the allegation that the defendant caused such persons to assemble and discharge firearms, etc., inasmuch as this was a probable consequence of his keeping a ground for shooting pigeons in such a place (*n*).

Similarly it was held to be a nuisance to keep a proprietary club in such a manner as to cause discomfort to the neighbours by reason of the dispersal of a noisy crowd and cab whistling (*o*); or to use premises for profit by giving entertainments with music and fireworks which attracted crowds of noisy and disorderly people, although inside the premises the amusements were conducted satisfactorily (*p*). [874]

In *Bostock v. North Staffordshire Rail. Co.* (*q*), a railway company were restrained by injunction from holding a regatta upon a reservoir to which they carried by excursion trains large numbers of people who trespassed upon the plaintiff's property adjoining the reservoir, and otherwise interfered with her rights of fishing and sporting over the reservoir. [875]

The lessee of a theatre has been held liable for a nuisance caused by the assembly of crowds in the public street awaiting the opening of the theatre (*r*). Exhibiting effigies in the window of a house adjoining the highway, whereby a crowd is attracted so as to obstruct the footway, is an indictable nuisance, without the effigies being in themselves objectionable, or the crowd consisting of disorderly, idle, or dissolute persons (*s*). [876]

An assembly of a crowd of persons in a public highway to the detriment of persons lawfully using the highway is a nuisance. For as WILLS, J., said "A claim on the part of persons so minded to assemble in any numbers and for so long a time as they please to remain assembled upon a highway, to the detriment of others having equal rights, is in its nature irreconcilable with the right of free passage, and there is, so far as we have been able to ascertain, no authority whatever in favour of it" (*t*).

The erection across a highway of a stand to view a procession, which stand was a public nuisance, was held to give rise to a cause of action to the owner of adjoining premises whose view was obstructed (*u*).

(*m*) *R. v. Moore* (1832), 3 B. & Ad. 184; 26 Digest 428, 1476; *Bellamy v. Wells* (1890), 63 L. T. 635; 26 Digest 428, 1481.

(*n*) *R. v. Moore*, *supra*; *R. v. Carlile* (1834), 6 C. & P. 636; 26 Digest 428, 1477, referred to in *Walker v. Brewster* (1867), L. R. 5 Eq. 33; 26 Digest 428, 1479.

(*o*) *Bellamy v. Wells*, *supra*; but see *Germaine v. London Exhibitions, Ltd.* (1896), 75 L. T. 101; 26 Digest 426, 1449.

(*p*) *Walker v. Brewster*, *supra*. See also *Inchbald v. Robinson*, *Same v. Barrington* (1869), 4 Ch. App. 388; 36 Digest 185, 290.

(*q*) (1852), 5 De G. & S. 584; 36 Digest 185, 238.

(*r*) *R. v. Betterton* (1695), 5 Mod. Rep. 142; 26 Digest 427, 1472; *Barber v. Penley*, [1893] 2 Ch. 447; 26 Digest 428, 1473, in which case the law of nuisance on this subject is summarised; *Lyons, Sons & Co. v. Gulliver*, [1914] 1 Ch. 631; 26 Digest 428, 1475. See also *Wagstaff v. Edison Bell Phonograph Corp.* (1893), 10 T. L. R. 80; 26 Digest 428, 1478, and *Riess v. The Oxford, Ltd.* (1893), 37 Sol. Jo. 842; 26 Digest 428, 1474.

(*s*) *R. v. Carlile*, *supra*.

(*t*) *Per WILLS, J.*, in *Ex parte Lewis* (1888), 21 Q. B. D. 191, at p. 197; 26 Digest 318, 500.

(*u*) *Campbell v. Paddington Corp.*, [1911] 1 K. B. 869; 26 Digest 429, 1483.

An indictment charging the defendant with having set a person to distribute handbills on a public footway was quashed (*a*).

See also "Miscellaneous Nuisances under sect. 72 of Highway Act, 1835," *post*. [877]

NUISANCE BY CREATING DANGER OR INCONVENIENCE ON OR NEAR HIGHWAY

General Principles.—The presence of danger on or near the highway may reasonably deter prudent persons from using the way, and thereby impedes the full enjoyment of the highway by the public, and is therefore a nuisance (*b*). Nor is the act or omission any the less a nuisance because the danger consists in the risk of an accidental deviation from the road, provided that the danger is so closely situated to, or substantially adjoins, the public way, that, *e.g.* by a false step, or giddiness, or the starting of a horse, the traveller is thrown into danger (*c*).

A pit dug in a waste, but thirty-six feet from a highway, was held not to be a nuisance within the above principle (*d*). So where a public footpath passed along defendants' land being near to a sluice on one side, and twenty-one feet from a canal on the other side, it was held that the canal was not so near the footpath as to be adjoining to it, so as to render the defendants liable for a nuisance in not fencing the canal (*e*).

It would appear that the question whether or not the excavation or other danger substantially adjoins the highway is a question of law for the court to decide, "and it would be very dangerous if it were otherwise, and if in every case it were left as a fact to the jury whether the excavation was sufficiently near to the highway to be dangerous" (*f*). It must be remembered, however, that the public take a highway on the terms on which it is dedicated to them, and as between them and the owner of the land they must use the way subject to any incidental risks with which it was dedicated (*g*). For example, the highway may have been dedicated with a cellar trap-door which when shut projects above the footway (*h*); or with a flight of steps, and if the local authority have altered the level of the street, necessitating an alteration of the steps, the owner of the steps will be entitled to alter them provided he causes no greater obstruction than previously existed (*i*).

In *Coupland v. Hardingham* (*k*), a lessee of a house was held liable for leaving the area of his house unfenced, but "in all probability the

(*a*) *R. v. Sarmon* (1758), 1 Burr. 516; 26 Digest 428, 1480.

(*b*) *Barnes v. Ward* (1850), 9 C. B. 392; 36 Digest 130, 362; *A.-G. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 26 Digest 421, 1406; and see *White v. Phillips* (1863), 33 L. J. (C. P.) 33; 44 Digest 122, 983, where a navigable river was made dangerous by erecting an improper camp-shed.

(*c*) *Barnes v. Ward*, *supra*; *Hardcastle v. South Yorkshire Railway and River Dun Co.* (1859), 28 L. J. (Exch.) 139; 36 Digest 212, 549; *Hounsell v. Smythe* (1860), 29 L. J. (C. P.) 203; 36 Digest 47, 291.

(*d*) *Blithe v. Topham* (1608), 1 Roll. Abr. 88.

(*e*) *Binks v. South Yorkshire Railway and River Dun Co.* (1862), 32 L. J. (Q. B.) 26; 7 Digest 287, 159.

(*f*) *Hardcastle v. South Yorkshire Railway and River Dun Co.*, *supra*; and see *Hounsell v. Smythe*, *supra*.

(*g*) *R. v. Dant* (1865), 29 J. P. 359, *per* ERLE, C. J.; 15 Digest 800, 8664.

(*h*) *Fisher v. Prowse* (1862), 31 L. J. (Q. B.) 212; 26 Digest 265, 66; and see also *Stone v. Jackson* (1855), 16 C. B. 199; 7 Digest 285, 151.

(*i*) *Cooper v. Walker* (1862), 31 L. J. (Q. B.) 212; 26 Digest 265, 66.

(*k*) (1813), 3 Camp. 398; 26 Digest 441, 1582.

road had been used long before the house was built" (l). So in *Jarvis v. Dean* (m), where defendant was held liable for damage caused by an open area, the report leaves it uncertain whether the road had been dedicated subject to the obstruction, but on the facts it is probable that the area had been made subsequent to the dedication (n).

There is, therefore, no obligation upon the owner of land, dedicated with a danger upon or adjoining it, to fence his adjoining land against the highway, though he must not do anything which creates or increases risk to the passengers (o). Thus, where there was a right of way over land in which there was an unprotected excavation or reservoir, the owner or occupier of the land was held not to be liable to a person who fell therein, owing to his having strayed out of the way by mistake (p). [878]

Where an ancient tidal ditch, which ran by the side of a highway, had existed time out of mind and was used by a sewer authority for the conveyance of sewage, it was held that there was no obligation on the authority to fence it, because the public had only the right of using the highway subject to the existence of the sewer in its then condition (q).

An unfenced quarry was situate in waste land belonging to the defendants, but open to the public, and used by any person wishing to cross the land with the licence of the owners. The quarry was near to and between two public highways leading over the waste, and was dangerous to persons accidentally deviating or crossing the waste from one road to the other. The defendants were held not liable for not fencing the quarry to a person crossing from one road to the other at night (r). [879]

Baited Traps.—See title TRAPS.

Barbed Wire Fences.—See title BARBED WIRE.

Dangerous and Ruinous Buildings.—An occupier, although only a tenant at will, who allows a house adjoining the highway to be in a ruinous condition, and likely to fall, may be indicted for a public nuisance; and his limited interest in the property and the liability for the execution of repairs have nothing to do with his liability for a public nuisance (s). So a rotten fence close to a highway is an obvious nuisance (t), but not, apparently, a heap of loose soil (u). A low wall, eighteen inches high, surmounted by a row of sharp spikes, and adjoin-

(l) *Per* MARTIN, B., in *Cornwell v. Metropolitan Commissioners of Sewers* (1855), 10 Exch. at p. 775; 7 Digest 283, 140.

(m) (1826), 3 Bing. 447; 7 Digest 285, 150.

(n) *Fisher v. Provese* (1862), 31 L. J. (Q. B.) 212, *per* BLACKBURN, J., at p. 219; 26 Digest 265, 66.

(o) *R. v. Dant* (1865), 29 J. P. 359; 15 Digest 800, 8664.

(p) *Hardcastle v. South Yorkshire Railway and River Dun Co.* (1859), 28 L. J. (Exch.) 139; 36 Digest 212, 549; *Binks v. South Yorkshire Railway and River Dun Co.* (1862), 32 L. J. (Q. B.) 26; 7 Digest 287, 159.

(q) *Cornwell v. Metropolitan Commissioners of Sewers* (1855), 10 Exch. 771; 7 Digest 283, 140.

(r) *Hounsell v. Smyth* (1860), 29 L. J. (C. P.) 203; 36 Digest 47, 291; but see as to fencing of quarries title QUARRIES AND MINE SHAFTS.

(s) *R. v. Watts* (1703), 1 Salk. 357; S. C. *sub nom.* *R. v. Watson*, 2 Ld. Raym. 856; 26 Digest 433, 1517.

(t) *Harrold v. Watney*, [1898] 2 Q. B. 320, *per* A. L. SMITH, L.J., at p. 322; 36 Digest 60, 443, where a fence fell owing partly to a child standing on it to look over it, and the child recovered damages against the owner of the fence. See also *Jewson v. Gatti* (1886), 2 T. L. R. 441, C. A.; 36 Digest 70, 447, but cf. *Barker v. Herbert*, [1911] 2 K. B. 633; 36 Digest 197, 374, where, however, it was held that the gap in the fence was not the cause of the accident.

(u) *Liddle v. Yorkshire (North Riding) County Council*, [1934] 2 K. B. 101, C. A.; Digest (Supp.).

ing the highway, has been held to be a nuisance (*a*). Where a wall on premises adjoining the highway had been knocked down by trespassers till it projected about eight inches above and twenty-one inches across one side of the highway, and the owner of the premises knew its state eight days before the accident to plaintiff's horse, he was held liable for the injury because he did not put the premises in a state of safety for passengers, or did not warn them (*b*). [880]

Sect. 160 of P.H.A., 1875 (*c*), incorporates, for the purpose of regulating such matters in urban districts, certain provisions of the Towns Improvement Clauses Act, 1847, relating to ruinous and dangerous buildings, for which see title DANGEROUS BUILDINGS. [881]

Chimneys on Fire.—See title CHIMNEYS.

Dangerous Obstacles and Fittings.—A heap of earth placed on private land so near to the highway as to be dangerous by causing horses passing on the highway to shy at it is a public nuisance (*d*). So is a defective grid or grating allowed to remain in the highway (*e*). So are temporary tramway rails which rest on the surface of the road, and are two inches above the surface with a bevel on each side (*f*). See also *R. v. Train* (*g*) where it was held to be a nuisance to lay down a tramway along a highway without statutory powers.

A horse-van and plough left by the grassy side of a highway, four or five feet from the metalled part of the way, may be a nuisance if calculated to frighten horses (*h*).

But there is no authority establishing the proposition that an invitee upon private premises is entitled to damages for an injury caused by something which is a public nuisance to an adjoining highway (*i*). Nor is a temporary heap of soil on undedicated land adjoining a highway a nuisance in connection with the highway unless it is likely to endanger persons lawfully using the highway (*k*).

Failing to reinstate properly the soil of the highway after lawfully disturbing it so that it is made dangerous is also a public nuisance (*l*).

[882]

The destruction of a highway by the use of a traction engine, whereby the highway is rendered dangerous to the public, is a nuisance (*m*).

A penalty not exceeding £5 may be imposed on any surveyor or

(*a*) *Fenna v. Clare*, [1895] 1 Q. B. 199; 7 Digest 286, 154.

(*b*) *Silberton v. Marriott* (1888), 52 J. P. 677; 26 Digest 433, 1518.

(*c*) 13 Statutes 691.

(*d*) *Brown v. Eastern and Midlands Rail. Co.* (1889), 22 Q. B. D. 391; 22 Digest 61, 345. See also *Burgess v. Gray* (1845), 1 C. B. 578; 34 Digest 163, 1269, and cf. *Little v. Yorkshire (North Riding) County Council*, *infra*.

(*e*) *White v. Hindley Local Board* (1875), L. R. 10 Q. B. 219; 26 Digest 412, 1322; *Blackmore v. Mile End Old Town Vestry* (1882), 9 Q. B. D. 451; 26 Digest 399, 1247; *Sandford v. Clarke* (1888), 21 Q. B. D. 398; 31 Digest 346, 4884; *Bowen v. Anderson*, [1894] 1 Q. B. 164; 26 Digest 418, 1366.

(*f*) *Tilling (T.), Ltd. v. Dick, Kerr & Co.*, [1905] 1 K. B. 562; 26 Digest 420, 1389.

(*g*) (1862), 2 B. & S. 640; 26 Digest 419, 1387.

(*h*) *Harris v. Mobbs* (1878), 3 Exch. D. 268; 26 Digest 437, 1545.

(*i*) *Bromley v. Mercer*, [1922] 2 K. B. 126; 26 Digest 434, 1520.

(*k*) *Little v. Yorkshire (North Riding) County Council*, [1934] 2 K. B. 101, C. A.; Digest (Supp.).

(*l*) *Goodson v. Sunbury Gas Consumers' Co., Ltd.* (1896), 60 J. P. 585; 26 Digest 421, 1402.

(*m*) *A.-G. v. Scott*, [1904] 1 K. B. 404; 26 Digest 430, 1498; and see also *Chichester Corp'n. v. Foster*, [1906] 1 K. B. 107; 26 Digest 431, 1500, where the defendant was held liable for damage done to water mains by the unnecessary and excessive weight of a traction engine. See also title UNREASONABLE AND EXCESSIVE USE OF HIGHWAY.

district surveyor who allows any heap of stone or other matter to remain at night on the highway to the danger of a passenger without taking due and reasonable precaution to guard against such danger (*n*). It is submitted that as by sect. 144 of P.H.A., 1875 (*o*), and sect. 25 of L.G.A., 1894 (*p*), as applied by sect. 30 and Sched. I, Part I., to L.G.A., 1929 (*q*), borough councils, urban district councils and county councils are respectively subject to the liabilities of surveyors of highways, proceedings will not lie against their officers under this section. This point was not taken in *Hardcastle v. Beilby* (*r*). Leaving stones unprotected at night upon a highway would also fall within sect. 72 of the Highway Act, 1835 (*s*), as to which see *post*, pp. 391 *et seq*.

In boroughs and urban districts doors opening outwards on to streets are forbidden, and existing doors of that character may be altered (*t*).
[883]

Dangerous Occupations.—The keeping of gunpowder or other highly inflammable material, or using powder mills near a highway, is a public nuisance (*u*). Generally as to explosives, fireworks, petroleum and their storage, see title EXPLOSIVES.

Negligently blasting stone in a quarry, so that large pieces are projected to the danger of persons in the neighbouring houses or on the highway adjoining, is an indictable nuisance (*a*). But shooting across a highway, after taking proper precautions, is not an indictable offence (*b*).

Persons carrying on dangerous work, or work likely to be dangerous, in the public streets, are liable for the damage caused by their negligence (*c*). Damage by sparks from a steam roller used on a highway will support an action (*d*). The person responsible for, or undertaking the work, cannot avoid liability by sub-contracting, and he will be liable for the negligence of his sub-contractor (*e*).

As to the measure of damages, see *Moss v. Christchurch R.D.C.*, *infra*. [884]

Dangerous Pits, Steam Engines, etc.—It is unlawful to sink pits or shafts, to erect steam engines, gins, or other like machines, or any machinery attached thereto, within the distance of twenty-five yards, nor any windmill within fifty yards, from any part of a carriageway or cartway, unless the same is within some house or building, or behind some wall or fence sufficient to conceal or screen the same from the highway, so that it may not be dangerous to passengers, horses or

(*n*) Highway Act, 1835, s. 56 ; 9 Statutes 76.

(*o*) 13 Statutes 683.

(*p*) 10 Statutes 794.

(*q*) *Ibid.*, 904, 975.

(*r*) [1892] 1 Q. B. 709 ; 26 Digest 413, 1327.

(*s*) 9 Statutes 86.

(*t*) Towns Improvement Clauses Act, 1847, ss. 71, 72 ; 13 Statutes 553 ; P.H.A., 1875, s. 160 ; 13 Statutes 691.

(*u*) *R. v. Taylor* (1742), 2 Stra. 1167 ; 36 Digest 176, 214 ; *R. v. Lister* (1857), 26 L. J. (M. C.) 196 ; 26 Digest 434, 1521 ; *Hepburn v. Lorden* (1865), 34 L. J. (Ch.) 293 ; 36 Digest 176, 216. And see *R. v. Mutters* (1864), Le. & Ca. 491 ; 26 Digest 434, 1522.

(*a*) *R. v. Mutters*, *supra*.

(*b*) *Lees v. Stone* (1919), 88 L. J. (K. B.) 1159 ; 26 Digest 434, 1523.

(*c*) See *Holliday v. National Telephone Co.*, [1899] 2 Q. B. 392 ; 34 Digest 163, 1271.

(*d*) *Moss v. Christchurch R.D.C.*, [1925] 2 K. B. 750 ; 26 Digest 432, 1509.

(*e*) *Maxwell v. British Thomson-Houston Co.* (1902), 18 T. L. R. 278 ; 34 Digest 163, 1272.

cattle (f). Nor is it lawful to cause to be made any fire for calcining or burning ironstone, limestone, bricks or clay, or the making of coke, within fifteen yards from any part of a carriageway or cartway, unless the same is so concealed or screened. A penalty not exceeding £5 is imposed for every day on which the section is contravened, but structures existing in August, 1835, are exempted (g). [885]

The provision as to the erection of engines, etc., is not confined to permanent buildings or erections fixed in the soil. "As soon as it" (a portable threshing engine) "is set up for the purpose of being worked it may well be said to be erected" (h). But stopping a portable engine for a temporary purpose, e.g. taking in water, is not within the section (h).

To create an offence under this section, *mens rea* must be proved. Where the owner of a threshing machine let it out on hire, and it was fixed within the prescribed distance unknown to the owner and in his absence, the court held that the owner could not be convicted (i). The object of the wall or fence is to conceal or screen, and it need not be so substantial as to resist a collision with it (k).

Machinery in mechanically propelled vehicles, and for purposes connected with agriculture, forestry, building operations or the repair, maintenance or construction of roads, is now freed from the restrictions in sect. 70 of the Highway Act, 1835, by sect. 52 of the Road Traffic Act, 1930 (l). Sect. 6 of Locomotives Act, 1865 (m), and the Locomotive Threshing Engines Act, 1894 (n), are repealed by the Act of 1930. See also title ROAD TRAFFIC. [886]

Dangerous Places.—A surveyor of highways was not, and his successors are not, under any obligation under the Highway Act, 1835, to fence dangerous places on or near the highway (o), except where he or his predecessor has opened up an excavation (p). Nor is there any such obligation at common law (q). But where an R.D.C. removed an existing fence on the ground that it was in bad repair, and was no longer necessary, all that was required being the erection of a short length of fence at each end, the jury found, in an action by the administratrix of a person who was drowned by falling into a stream during flood, that the removal of the fence under the circumstances was inconsistent with reasonable regard for the safety of the persons using the road, and this was held to amount to a verdict of misfeasance, so as to render the council liable (r). Borough and urban district councils may provide and keep in repair fences and posts for the safety of foot-passengers (s), but no obligation is imposed by the section (t).

If a public footway is diverted under statutory powers, a duty is cast upon the authority to protect, by fencing or the like, persons

(f) Highway Act, 1835, s. 70; 9 Statutes 85.

(g) Proviso to s. 70 of Act of 1835.

(h) *Smith v. Stokes* (1863), 32 L. J. (M. C.) 199; 26 Digest 437, 1543.

(i) *Harrison v. Leaper* (1862), 26 J. P. 373; 26 Digest 437, 1542.

(k) *Blakeley v. Baker* (1878), 39 L. T. 359; 7 Digest 295, 208.

(l) 23 Statutes 648.

(m) 19 Statutes 60.

(n) 1 Statutes 66.

(o) *Morgan v. Leach* (1842), 10 M. & W. 558; 26 Digest 458, 1749.

(p) See Highway Act, 1835, s. 55; 9 Statutes 75.

(q) *R. v. Whitney* (1835), 7 C. & P. 208; 26 Digest 374, 997.

(r) *Whyler v. Bingham R.D.C.*, [1901] 1 K. B. 45; 26 Digest 389, 1168.

(s) P.H.A., 1875, s. 149; 13 Statutes 685.

(t) See *Wilson v. Halifax Corpn.* (1868), L. R. 3 Ex. 114; 7 Digest 293, 200.

reasonably using the footpath from injury through going astray at the point of diversion (*u*).

A local Act provided that if the corporation were of opinion that danger to the public was likely to ensue by reason of land abutting on streets not being fenced, the owner of such land should, when required by the corporation and to their satisfaction, fence off the land from the street, and should afterwards keep the fence in repair. It was held that the Act only applied to a new street where there was no fence and not to the sides of a road which had been a turnpike road (*a*). [887]

By sect. 160 of P.H.A., 1875 (*b*), the provisions of the Towns Improvement Clauses Act, 1847, relating to precautions during the construction and repair of sewers, streets and houses, are incorporated with the Act of 1875 in boroughs and urban districts. These are as follows. By sect. 79 of the Act of 1847 (*c*), during the construction or repair of any street vested in the council, and during the construction or repair of any sewers or drains, proper precautions must be taken by the council for guarding against accident by shoring up and protecting the adjoining houses; and the council must cause such bars or chains to be fixed across or in any of the streets to prevent the passage of carriages and horses, while such works are carried on, as to the council seem proper, and must cause any sewer or drain or other works, during the construction or repair thereof by them, to be lighted and guarded during the night, so as to prevent accidents. Penalties are imposed for interfering with such protections or lights. This does not mean that traffic must be entirely stopped, but merely that protection must be given so as to prevent vehicles and persons from passing over the place where the works are in progress (*d*). [888]

By sect. 80 of the Act of 1847 (*e*) persons building or taking down any building, or altering or repairing the outward part of it, in such a manner as to obstruct or render inconvenient any street, must before commencing the work cause sufficient boards or fences to be put up in order to separate the building from the street, with a convenient footway for passengers outside the boarding, and must adequately protect and light the same, under a penalty not exceeding £5 for every offence, and a further penalty not exceeding 40s. per day during default (*f*). [889]

By sect. 83 (*g*), if any building or hole or other place near any street be for want of sufficient repair, protection, or enclosure, dangerous to passengers along the street, the council must cause the same to be repaired, protected, or enclosed so as to prevent danger therefrom; and the expenses may be recovered from the owner of the premises. A goit by the side of an ancient public footpath is not a hole or other place within this section (*h*). [890]

Discharge of Water into Streets.—The occupier or owner of every building in, adjoining, or near any street in a borough or urban district,

(*u*) *Hurst v. Taylor* (1885), 14 Q. B. D. 918; 26 Digest 477, 1897.

(*a*) *Rotherham Corpn. v. Fullerton* (1884), 50 L. T. 364; 26 Digest 390, 1169.

(*b*) 13 Statutes 691.

(*c*) *Ibid.*, 556.

(*d*) *Woodall v. Nuttall* (1891), 56 J. P. 150; 26 Digest 390, 1172.

(*e*) 13 Statutes 556.

(*f*) S. 80 is superseded by s. 34 of the P.H.A. Amendment Act, 1890 (13 Statutes 837), when adopted.

(*g*) 13 Statutes 558.

(*h*) *Wilson v. Halifax Corpn.* (1868), L. R. 3 Ex. 114; 7 Digest 293, 200.

must, after notice, provide and keep proper spouts and pipes to take the rain-water from the roof and to prevent it discharging on to passengers or flowing over the footpaths (*i*). [891]

Ditches.—Cutting ditches across the grass strips at the sides of a highway, whereby danger is caused to persons walking on such strips, is a nuisance (*k*). And see title DITCHES. [892]

Excavations.—A builder who leaves an excavated area unfenced at night is guilty of a public nuisance (*l*). So is the occupier of an unfinished building who allows a hoist within fourteen inches of the pavement of a highway to remain unfenced (*m*). [893]

Fireworks and Firearms.—See that title.

Gates and Doors Opening on to Highways.—County councils have power to make bye-laws, subject to confirmation by the M. of T., for prohibiting or regulating the erection of gates opening outwards on to highways (*n*).

By sects. 71, 72 of the Towns Improvement Clauses Act, 1847 (*o*), incorporated with P.H.A., 1875, by sect. 160 (*p*) of the latter, in so far as boroughs and urban districts are concerned, all future doors are required to open inwards, and existing doors opening outwards may be altered to prevent their projecting over any part of a public street. [894]

Infectious Diseases.—See title INFECTIOUS DISEASES.

Locomotives.—See title ROAD TRAFFIC.

Mine Shafts.—See title QUARRIES AND MINE SHAFTS.

Non-Repair of Highway.—A highway out of repair is a public nuisance, but this subject and the remedies for a neglect of duty to repair, are dealt with in title REPAIR OF ROADS.

No private action would lie against the inhabitants of a parish for damage owing to non-repair of a highway, or against a surveyor of highways (*q*), or against urban authorities who have succeeded to the liabilities of surveyors of highways (*r*).

As to a similar immunity in the case of metropolitan vestries or

(*i*) Towns Improvement Clauses Act, 1847, s. 74; 13 Statutes 554; P.H.A., 1875, s. 160; 13 Statutes 691; and see title ROAD PROTECTION.

(*k*) *Nicol v. Beaumont* (1883), 53 L. J. (Ch.) 853; 26 Digest 312, 443.

(*l*) *Barnes v. Ward* (1850), 9 C. B. 392; 36 Digest 130, 862. See also *POLLOCK, C.B.*, in *Firmstone v. Wheeley* (1844), 2 Dow. & L. 208; 34 Digest 726, 1075.

(*m*) *Hadley v. Taylor* (1865), L. R. 1 C. P. 53; 7 Digest 285, 147; and see cases cited under heading "Dangerous Places." Cf. *Horridge v. Makinson* (1915), 84 L. J. (K. B.) 1294; 7 Digest 285, 149, where the nuisance was not under the control of the adjoining owner.

(*n*) Highways and Locomotives (Amendment) Act, 1878, s. 26 (4); 9 Statutes 181.

(*o*) 13 Statutes 553.

(*p*) *Ibid.*, 691.

(*q*) *Young v. Davis* (1862), 7 H. & N. 760, affirmed (1863), 2 H. & C. 197; 26 Digest 398, 1241; *Cowley v. Newmarket Local Board*, [1892] A. C. 345; 26 Digest 400, 1251; *Gibson v. Preston Corpn.* (1870), L. R. 5 Q. B. 218; 26 Digest 357, 834.

(*r*) *Cowley v. Newmarket Local Board*, *supra*; *Gibson v. Preston Corpn.*, *supra*; *Oliver v. Horsham Local Board*, [1894] 1 Q. B. 332; 26 Digest 400, 1253; *Robinson v. Workington Corpn.*, [1897] 1 Q. B. 619; 38 Digest 55, 318; *Maguire v. Liverpool Corpn.*, [1905] 1 K. B. 767; 26 Digest 400, 1255.

borough councils, see *Parsons v. St. Mathew, Bethnal Green (s)*. [895]

Where a local Act transfers to a public body the common law obligations of the inhabitants at large to repair highways, there is a presumption that it was not intended to impose any greater obligation on the public body than formerly existed on the inhabitants (*t*). But the council will be liable for acts amounting to misfeasance (*u*). Where an accident was occasioned through a pool of tar in the road, which during hot weather had oozed up between the setts of wood or stone from the asphalt beneath, this was held not to amount to misfeasance of the local authority (*a*), and they will not be liable for damage done through the neglect of persons having statutory powers who, in the exercise of such powers, have disturbed the roadway, and have failed to reinstate it (*b*).

Whilst a local authority are not liable in an action for damages for mere nonfeasance in allowing a road to get into a state of disrepair, they may be liable for a hole caused by the decay and the falling in of a sewer vested in and constructed by them (*c*); but it is necessary that the condition of things should have been created or continued by some wrongful act or negligence on the part of the authority (*d*). [896]

Whether an action lies at the instance of a private person for a nuisance for non-repair against a person liable to repair *ratione tenuræ* is still a matter of doubt. "There is, so far as we are aware, no record of any such case in the books, although the circumstances giving rise to such an action must have often occurred. In the case of *Young v. Davis (e)*, MARTIN, B., expressed considerable doubt on the point (*f*"); but the dicta of Lord TENTERDEN, C.J., in *Henley v. Lyme Regis Corporation (g)*, and of POLLOCK, C.B., in *M'Kinnon v. Penson (h)* suggest that such an action may lie. [897]

Overhead Wires.—See title OVERHEAD WIRES.

Projections over Highways.—See title PROJECTIONS OVER HIGHWAYS.

Quarries.—See title QUARRIES AND MINE SHAFTS. [898]

Railways near Highway.—The user of engines on a railway without statutory power renders the person using them liable for all damage done, although there has been no negligence (*i*); but where statutory

(s) (1867), L. R. 3 C. P. 56; 26 Digest 399, 1244; also *Saunders v. Holborn District Board of Works*, [1895] 1 Q. B. 64, at p. 68; 26 Digest 413, 1325.

(t) *Maguire v. Liverpool Corpn.*, [1905] 1 K. B. 767; 26 Digest 400, 1255.

(u) *Foreman v. Canterbury Corpn.* (1871), L. R. 6 Q. B. 214; 26 Digest 408, 1294; *Whyler v. Bingham R.D.C.*, [1901] 1 K. B. 45; 26 Digest 389, 1168; *Gas Light and Coke Co. v. St. Mary Abbott's, Kensington, Vestry* (1885), 15 Q. B. D. 1; 26 Digest 432, 1508.

(a) *Holloway v. Birmingham Corpn.* (1905), 69 J. P. 358; 26 Digest 401, 1256.

(b) *Barham v. Ipswich Dock Commissioners* (1885), 54 L. T. 23; 34 Digest 166, 1290.

(c) *Bathurst Borough v. Macpherson* (1879), 4 App. Cas. 256; 26 Digest 405, 1274.

(d) *Lambert v. Lowestoft Corpn.*, [1901] 1 K. B. 590; 26 Digest 411, 1316, explaining the *Bathurst Case* and certain dicta in *Municipal Council of Sydney v. Bourke*, [1895] A. C. 433; 26 Digest 400, 1254.

(e) (1862), 7 H. & N. 760, at p. 773; 26 Digest 398, 1241.

(f) *Rundle v. Hearle*, [1898] 2 Q. B. 83, at p. 88, per Lord RUSSELL, C.J.; 26 Digest 369, 951.

(g) (1829), 6 Bing. 100; 30 Digest 257, 591.

(h) (1853), 8 Ex. 327; 26 Digest 588, 2732.

(i) *Jones v. Festiniog Rail. Co.* (1868), L. R. 3 Q. B. 733; 38 Digest 350, 562.

powers have been granted to use locomotive engines on a railway constructed in a specified manner and place, the railway company are not liable for any nuisance caused or damage done provided there has been no negligence. Thus, power was given to construct a railway according to deposited plans from which the company were not to deviate more than 100 yards. The railway was parallel and adjacent to a public highway, and in some places within five yards of it. It was held that they were not liable for a nuisance consisting of the frightening of horses on the highway (*k*); nor are they liable for an accidental fire caused by a spark from an engine provided they have taken every precaution and the best scientific means to prevent injury, and are not guilty of negligence (*l*); nor are they liable for damage caused by vibration occasioned (without negligence) by the running of their trains (*m*). But see the Railway Fires Act, 1905 (*n*), and the amending Act of 1923 (*o*), as to the liability (limited to £200) of railway companies for damage done, on or after January 1, 1908, to agricultural land or to agricultural crops by fire arising from sparks or cinders emitted from their engines.

There is no statutory obligation on a railway company to screen their railway from the public road (*p*), but if the highway authority apprehend danger to the passengers on the highway in consequence of horses being frightened by the sight of the engines or carriages travelling on the railway, they may, after fourteen days' notice to the company, apply to the Board of Trade, who may, if they think fit, require the company to execute works for the purpose of obviating or lessening the danger (*q*). [899]

Subsidence.—See title SUBSIDENCE.

Swings, Roundabouts, etc.—See title ROUNDABOUTS.

Tramways. See title TRAMWAYS.

Vaults under Streets.—Vaults or cellars under a pavement or footway in a borough or urban district must be properly covered as required by the authority, under penalties in cases of default (*r*). [900]

NUISANCE BY UNREASONABLE USER OF HIGHWAY

General Principles.—The highway must be used by individuals in a manner which is consistent with the exercise of the same right of user by others. Whether the user complained of is reasonable or not is a

(*k*) *R. v. Pease* (1832), 4 B. & Ad. 30; 26 Digest 436, 1540.

(*l*) *Vaughan v. Taff Vale Rail. Co.* (1860), 29 L. J. (Exch.) 247; 38 Digest 349, 558; and see *Canadian Pacific Rail. Co. v. Roy*, [1902] A. C. 200; 38 Digest 27, 142; *Eastern and South African Telegraph Co., Ltd. v. Cape Town Tramways Cos., Ltd.*, [1902] A. C. 381; 38 Digest 49, 236.

(*m*) *Hammersmith, etc., Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 Digest 24, 132.

(*n*) 1 Statutes 68.

(*o*) *Ibid.*, 121.

(*p*) *Simkin v. London and North Western Rail. Co.* (1888), 21 Q. B. D. 453; 26 Digest 436, 1541; see also *Ramsden v. Lancashire and Yorkshire Rail. Co.* (1888), 53 J. P. 183; 26 Digest 437, 1544.

(*q*) Railway Clauses Consolidation Act, 1845, s. 63; 14 Statutes 54.

(*r*) Towns Improvement Clauses Act, 1847, s. 73; 13 Statutes 554; P.H.A., 1875, s. 160; 13 Statutes 691; and P.H.As. Amendment Act, 1890, s. 35; 13 Statutes 838.

question of fact for the jury, and all the circumstances must be considered (*s*).

So in the exercise by an adjoining owner of his right of access to his premises, regard must be had to the interests of the public, and where public and private interests clash, the latter must yield to the former. See title *HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO*.

The highway must not be used for the purpose of carrying on business there (*t*). Thus a timber merchant may not cut his logs in the street adjoining his timber yard, though he may not be able otherwise to get them into his yard or to carry on his business (*u*). It is otherwise if the road has been dedicated subject to such uses (see title *DEDICATION AND ADOPTION OF HIGHWAYS*). For instance, it would appear that in these circumstances an occupier of premises in a mews may obstruct the mews by washing carriages there (*a*). But in *R. v. Sarmon* (*b*), it was held that placing a person on the footway of a public street in London to deliver bills, was not of itself an indictable nuisance, although the footway was greatly obstructed. See the Town Police Clauses Act, 1847, s. 28, *post*, for a prohibition of carrying on certain businesses in the streets of a borough or urban district. [901]

The following acts have been held to be unreasonable user of a highway: the user of a common pack- or horse-way by a cart so as to plough it up and render it less convenient for horsemen (*c*); the user of a highway with a waggon of excessive weight so as to damage the highway (*d*); the keeping of waggons standing in the street for several hours at a time, and incommoding foot-passengers by leaving goods on the footway, even though room is left in the roadway for two carriages to pass on the opposite side (*e*); allowing horses and vans to remain an unnecessary length of time in a narrow street so as to obstruct the highway or private right of access thereto (*f*); allowing stage coaches to stand and remain for a long time on the public highway (*g*); leaving a roller on the sward by the roadside so that the upturned shafts projected a few inches over the metalled road, with the intention that it should remain there until it was convenient to take it away (*h*); leaving a van and steam plough on the roadside waste at night (*i*); and using on the highway an exceptionally heavy locomotive whereby water mains were broken (*k*).

Where the defendant's premises were approached by three passages, and in course of rebuilding he used only one of these for the carriage

(*s*) *A.-G. v. Brighton and Hove Co-operative Supply Association*, [1900] 1 Ch. 276; 26 Digest 425, 1442; *Original Hartlepool Collieries Co. v. Gibb* (1877), 5 Ch. D. 713; 26 Digest 426, 1447; *Benjamin v. Storr* (1874), L. R. 9 C. P. 400; 26 Digest 425, 1441; *R. v. Mathias* (1861), 2 F. & F. 570; 26 Digest 448, 1641.

(*t*) *R. v. Russell* (1805), 6 East, 427; 26 Digest 425, 1440.

(*u*) *R. v. Jones* (1812), 3 Camp. 230; 26 Digest 423, 1414.

(*a*) *Chelsea Vestry v. Stoddard* (1879), 43 J. P. 782; 26 Digest 308, 399.

(*b*) (1758), 1 Burr. 516; 26 Digest 428, 1480.

(*c*) See *per curiam R. v. Leech* (1705), 6 Mod. Rep. 145, in which it was held to be a public nuisance to bring a great ship of 300 tons into Billingsgate dock.

(*d*) *Egerly's Case* (1641), 3 Salk. 183. See now, as to extraordinary traffic on highways, title *UNREASONABLE AND EXCESSIVE USE OF HIGHWAY*.

(*e*) *R. v. Russell*, *supra*; *R. v. Cross* (1812), 3 Camp. 224; 26 Digest 425, 1445; *A.-G. v. Brighton and Hove Co-operative Supply Association*, *supra*.

(*f*) *Benjamin v. Storr*, *supra*, and see Town Police Clauses Act, 1847, s. 28, *post*.

(*g*) *R. v. Cross*, *supra*.

(*h*) *Wilkins v. Day* (1883), 12 Q. B. D. 110; 26 Digest 437, 1546.

(*i*) *Harris v. Mobbs* (1878), 3 Exch. D. 268; 26 Digest 437, 1545.

(*k*) *Chichester Corp'n. v. Foster*, [1906] 1 K. B. 167; 26 Digest 431, 1500.

of materials, instead of distributing the work over all the passages, whereby the plaintiff suffered obstruction to his right of access, defendant was held liable for unreasonable user. He was also held liable for having done his work during the busiest hours of the day, when he might have reduced the inconvenience by carrying his materials early in the morning or late at night (*l*).

It is not an unreasonable user of the highway to employ locomotives and trucks upon it, unless they create a substantial obstruction, and occasion delay and inconvenience to the public substantially greater than would be occasioned by horses and carts (*m*).

It is not unlawful to wheel a perambulator on a public footway, that being a usual accompaniment of a large class of foot-passengers, provided that the size and weight of it are such as not to inconvenience other passengers, or to injure the soil; and it is a question for the jury to determine whether its user is justifiable under the circumstances (*n*).

[902]

Regulation of Traffic.—See title ROAD TRAFFIC.

NUISANCES AGAINST DECENCY AND GOOD ORDER IN HIGHWAYS

Bye-Laws.—See titles BYE-LAWS and GOOD RULE AND GOVERNMENT.

Betting in Streets.—See title BETTING.

Drunkenness and Disorderly Conduct.—See title OFFENSIVE BEHAVIOUR.

Indecent Exposure, Indecent Prints, Advertisements, etc., Profane and Indecent Language, Prostitutes.—See title OFFENSIVE BEHAVIOUR.

Noise.—See title NOISE.

Urinals.—The consent of the council is necessary to the erection of a public sanitary convenience in any street or any place accessible therefrom in any borough or district for which sect. 20 of the P.H.A. Amendment Act, 1890 (*o*), has been adopted. As to the power of the council to make bye-laws and regulations relating to urinals, see this section. See also title PUBLIC LAVATORIES. [903]

MISCELLANEOUS NUISANCES UNDER SECT. 72 OF HIGHWAY ACT, 1835

Sect. 72 of the Highway Act, 1835 (*p*), deals with a number of nuisances affecting highways, and imposes a penalty not exceeding 40s. over and above the damage done.

The following general remarks may be made upon the section before stating the various offences, which are set out below in numbered paragraphs for the purpose of reference. Towards the end of the section (see under paragraph (15), *post*) are the words, "to the injury of such highway or to the injury, interruption, or personal danger of any person travelling thereon." According to the report of *Stinson v. Browning* (1866), L. R. 1 C. P. 321, it would appear that it was decided in that case that these words governed the whole section. This is not so.

(*l*) *Fritz v. Hobson* (1880), 14 Ch. D. 542; 26 Digest 336, 664.

(*m*) *R. v. Chittenden* (1885), 49 J. P. 503; 26 Digest 430, 1497.

(*n*) *R. v. Mathias* (1861), 2 F. & F. 570; 26 Digest 448, 1641.

(*o*) 13 Statutes 831.

(*p*) 9 Statutes 86.

Some of the prohibitions are absolute, and the words referred to only qualify the passages coming after the words, "or if any person shall make," etc., in paragraph (13) to the end of paragraph (17). See the judgment in this case correctly reported in 30 J. P. 312 (q), and *Brotherton v. Tittensor* (r). The section does not apply to all indictable obstructions, but is confined to obstructions of the character specified (s).

Merely suffering an obstruction is not "wilfully obstructing." Thus, in *Walker v. Horner* (s), it was held that merely suffering trees to grow so as to be an obstruction was not "wilful obstruction" within the meaning of this section; and in *Crossdill v. Ratcliff* (t) it was held, for the same reason, that an owner of houses could not be convicted under the section for refusing to do anything to prevent rainwater from dropping from the eaves of the houses on to a public footpath so as to interfere with the passage of the public. Nor, if a tree is blown down during a violent gale and falls across a highway so as to cause an obstruction, is the occupier of the land under any obligation to light the tree or to warn persons passing along the highway of the existence of the obstruction (u). But on the other hand it was held that an omission to remove an obstruction after notice may be a wilful obstruction within the meaning of the section, and the court, whilst bound to follow the decision in *Walker v. Horner*, questioned it and then distinguished it (a).

"Wilfully" means "purposely" (b). Any person may take proceedings under sect. 72, and the Act applies to localities in which special legislation is also in force (c). [904]

There is no right of appeal under sect. 105 of the Highway Act, 1835 (d), where a summons under this section has been dismissed (e), but a case may be stated under the Summary Jurisdiction Acts, 1857 and 1879, whether the result is an acquittal or a conviction (f).

The section must be construed with reference to any limited dedication that may be proved, and a person cannot be convicted of injuring a highway by ploughing it up if he can show that he had a right by the terms of the dedication so to do (g). For instances of limited dedication, see title DEDICATION AND ADOPTION OF HIGHWAYS.

The jurisdiction of justices under sect. 72 may be ousted by a *bona fide* claim of right (h). In this case defendant had cut off the top rail of a stile and was charged with malicious damage under sect. 52 of the Malicious Damage Act, 1861 (i). He claimed the right to destroy the top rail, and asserted moreover that the whole stile was illegal, and gave

(q) 26 Digest 436, 1537.

(r) (1896), 60 J. P. 72; 26 Digest 438, 1557.

(s) (1875), 1 Q. B. D. 4; 26 Digest 416, 1344.

(t) (1862), 26 J. P. 165; 26 Digest 415, 1343.

(u) *Hudson v. Bray*, [1917] 1 K. B. 520; 26 Digest 416, 1349.

(a) *Gully v. Smith* (1883), 12 Q. B. D. 121; 26 Digest 416, 1346.

(b) *Fearnley v. Ormsby* (1879), 4 C. P. D. 136; 26 Digest 416, 1345. See also *Gayford v. Chouler*, [1898] 1 Q. B. 316; 15 Digest 1040, 11733.

(c) *Back v. Holmes* (1887), 56 L. T. 713; 26 Digest 416, 1348; *Hawkins v. Robinson* (1872), 37 J. P. 662; 26 Digest 420, 1396.

(d) 9 Statutes 109.

(e) *R. v. London County Keepers of the Peace and Justices* (1890), 25 Q. B. D. 357; 26 Digest 460, 1760.

(f) *Davys v. Douglas* (1859), 23 L. J. (M. C.) 193; 33 Digest 420, 1311.

(g) *Mercer v. Woodgate* (1869), L. R. 5 Q. B. 26; 26 Digest 417, 1357; *Dennis & Sons v. Good* (1913), 88 L. J. (K. B.) 388; 26 Digest 417, 1361.

(h) See *R. v. Towgood* (1871), 35 J. P. 791; 33 Digest 341, 520.

(i) Repealed by the Criminal Justice Administration Act, 1914.

evidence on both points. The justices overruled the claim of right and convicted. This was quashed on the ground that the justices had no jurisdiction, as the claim had been made *bona fide*, and it had not been waived by defendant going into evidence (*k*). The claim of right must be raised before the justices, and it will not be entertained by the court which considers the special case, *e.g.* a right to plough up a footpath (*l*). But the mere fact that a defendant raises a claim of right to obstruct the highway is not sufficient of itself to oust the jurisdiction of the justices. Such a claim amounts to no more than that the dedication of the highway was subject to the alleged right to obstruct, and it is for the defendant to make out this limited dedication, and this the justices must consider (*m*). [905]

A person was convicted under sect. 72 of wilfully and wantonly damaging a footway. The surveyor had substituted for stepping-stones a bridge. The damage complained of was done by applicant, who was a servant of the owner of the estate on which the footway was situate and who conceived that his rights were seriously affected by the bridge. It was urged that though it was too late to have a case stated there was a *bona fide* claim of right and that the justices had no jurisdiction, and therefore a *rule nisi* was moved for a *certiorari* to bring up the conviction to be quashed. The court, however, held that there was ample evidence to give jurisdiction, and that *certiorari* was not the proper remedy. "The applicant is not without a remedy. The act complained of may be repeated, and on another occasion the magistrates may be required to state a case, if any desire is entertained of having the opinion of this court, but a *certiorari* is not the proper remedy" (*n*).

As to powers for detaining offenders, see sects. 78, 79 of the Highway Act, 1835. [906]

The list of specific offences under the section is as follows :

(1) "If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot-passengers."

The footpath or causeway here referred to must exist by the side of a road, and does not include a pathway which is either merely a footpath or is a public way for foot-passengers and carriages alike; *e.g.* an open path along the sea beach (*o*). "It was intended to prevent persons who drive or ride along a road from riding or driving over the footpaths by the side of the road, and so damaging the path and endangering the safety of the foot-passengers . . . as footpaths may be, and often are, level with the road, it was necessary to insert 'footpath' as well as 'causeway'" (*p*). [907]

(2) "Or shall wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any such footpath or causeway."

See note under (1) as to footpath or causeway.

In an Irish case (*q*) it has been held that a person riding a bicycle on a footpath alongside a road in a country district may be summarily

(*k*) See also *Usher v. Luxmore* (1889), 54 J. P. 405; 15 Digest 1039, 11723.

(*l*) *Brackenborough v. Thoresby* (1869), 33 J. P. 565; 26 Digest 416, 1356.

(*m*) *Leicester Urban Sanitary Authority v. Holland* (1888), 52 J. P. 788; 26 Digest 308, 398.

(*n*) *Ex parte Whittaker* (1859), 23 J. P. Jo. 84; 26 Digest 419, 1375.

(*o*) *R. v. Pratt* (1867), L. R. 3 Q. B. 64; 26 Digest 438, 1556.

(*p*) *Ibid.*, per COCKBURN, C.J., at pp. 65, 66.

(*q*) *M'Kee v. M'Grath* (1892), 30 L. R. Ir. 41; 26 Digest 438, *p*.

convicted for wilfully preventing and interrupting the free passage of persons along the road, including the footpath, although no evidence of obstruction to the free passage of foot-passengers along the path was produced. The enactment under which proceedings were taken was sect. 13 (3) of the Summary Jurisdiction (Ireland) Act, 1851: "Any person who shall in any manner wilfully or by negligence or misbehaviour, prevent or interrupt the free passage of any person or carriage on any public road, or street, or crossing, shall be liable to a fine not exceeding twenty shillings." [908]

(3) "Or shall tether any horse, ass, mule, swine, or cattle on any highway, so as to suffer or permit the tethered animal to be thereon." See also sect. 25 of the Highway Act, 1864, *ante*. [909]

(4) "Or shall cause any injury or damage to be done to the said highway, or the hedges, posts, rails, walls, or fences thereof."

But a frontager could not be convicted if the damage was caused by the proper exercise of his right of access (*r*). A defence that the person proceeded against has the licence of the local authority to interfere with the soil of the highway will not avail unless the authority have statutory powers (*s*). [910]

(5) "Or shall wilfully obstruct the passage of any footway." See cases under paragraph (17).

A custom to put up stalls at certain annual petty or statute sessions under 5 Eliz. c. 4, for hiring servants, is not an immemorial custom which will justify such a course, and a conviction under this section was sustained (*t*). For an instance of an immemorial custom, see *Elwood v. Bullock* (*a*).

An owner cannot be convicted if he removes stepping-stones which have been unlawfully put up by the surveyor of highways so as to enlarge the previously existing right (*b*). A surveyor of highways who left stones at night in the road without protection was held to be within this part of the section as well as within sect. 56 of the same Act (*c*).

Causing a crowd to assemble by singing hymns is an offence under this head (*d*). Proof of obstruction renders irrelevant the evidence of persons who were not inconvenienced (*e*). [911]

(6) "Or wilfully destroy or injure the surface of any highway."

A footway may be a highway under this part of the section (*f*). A gas company acting without statutory powers can be convicted under this clause, and cannot justify by pleading that they have the consent of the local authority in whom the highway is vested (*g*). Mining operations under the highway by appellants damaged the surface of the highway, and the magistrates convicted the appellants, but the conviction was quashed (*h*). Ploughing up a footpath, even under statutory

(*r*) See *St. Mary, Newington, Vestry v. Jacobs* (1871), L. R. 7 Q. B. 47; 26 Digest 325, 537.

(*s*) *Hawkins v. Robinson* (1872), 37 J. P. 662; 26 Digest 420, 1396, and see *ante*, pp. 374, 378.

(*t*) *Simpson v. Wells* (1872), L. R. 7 Q. B. 214; 26 Digest 441, 1578.

(*a*) (1844), 6 Q. B. 383; 26 Digest 441, 1577.

(*b*) *Butcliffe v. Sowerby Highways Surveyor* (1859), 1 L. T. 7; 26 Digest 329, 612.

(*c*) *Fearnley v. Ormsby* (1879), 4 C. P. D. 186; 26 Digest 416, 1345.

(*d*) *Back v. Holmes* (1887), 56 L. T. 713; 26 Digest 416, 1348, and see *Horner v. Cadman* (1886), 55 L. J. (M. C.) 110; 26 Digest 416, 1347.

(*e*) *Read v. Perrett* (1876), 1 Exch. D. 349; 26 Digest 513, 2175.

(*f*) *Brackenborough v. Thoresby* (1869), 33 J. P. 565; 26 Digest 416, 1356.

(*g*) See *ante*, p. 378.

(*h*) *Pease v. Paver* (1875), 39 J. P. Jo. 407; 26 Digest 439, 1564.

requirement if the requirement does not specifically authorise such ploughing up, is an offence under this section (i). [912]

(7) "Or shall wilfully or wantonly pull up, cut down, remove, or damage the posts, blocks, or stones fixed by the said surveyor as herein directed." [918]

(8) "Or dig or cut down the banks which are the securities and defence of the said highways." [914]

(9) "Or break, damage, or throw down the stones, bricks, or wood fixed upon the parapets or battlements of bridges, or otherwise injure or deface the same." [915]

(10) "Or pull down, destroy, or obliterate, or deface any mile stone or post, graduated or direction post or stone erected upon any highway." [916]

(11) "Or shall play at football or any other game on any part of the said highways, to the annoyance of any passenger or passengers."

On a charge of playing football on the highway, a constable proved that defendant played with hundreds of persons, and that two horses drawing carts were frightened, but third persons were not called to prove annoyance. A conviction was sustained on this evidence, and it was ruled unnecessary to require the evidence of third persons (j).

"Hunting the stag," a game consisting of a person representing a stag being chased by others, is within the expression "any other game," and is an offence if obstruction be caused (k). [917]

(12) "Or if any hawker, higgler, gipsy or other person travelling shall pitch any tent, booth, stall, or stand, or encamp upon any part of any highway."

It is not necessary to constitute this offence that the act is "to the injury of such highway, or to the injury, interruption or personal danger of any person travelling thereon," as is required in the latter part of the section (l). See *post*, paragraph (15). [918]

(13) "Or if any person shall make or assist in making any fire, or shall wantonly fire off any gun or pistol, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, within fifty feet of the centre of such carriageway or cartway."

These words and the remainder of the section are qualified by the expression found later (see under paragraph (15)), namely, "to the injury of such highway, or to the injury, interruption or personal danger of any person travelling thereon" (m). So where a fire was lighted by a wheelwright for his business purposes, within fifty feet of the centre of the highway, it was held not to be an offence (n). The appellant was convicted of rolling a lighted tar barrel, and causing it to burn, on Guy Fawkes day, but in the absence of evidence that the highway was injured or passengers endangered, injured, or interrupted, the conviction was quashed (o). [919]

(14) "Or bait, or run for the purpose of baiting, any bull, upon or near any highway." See the note under paragraph (13). [920]

(15) "Or shall lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish or other matter or thing whatsoever upon such

(i) *Dennis & Sons, Ltd. v. Good* (1918), 88 L. J. (K. B.) 388; 26 Digest 417, 1361.

(j) *Woolley v. Corbishley* (1860), 24 J. P. 773; 26 Digest 422, 1409.

(k) *Pappin v. Maynard* (1863), 27 J. P. 745; 26 Digest 422, 1410.

(l) *Brotherton v. Titensor* (1896), 60 J. P. 72; 26 Digest 438, 1557.

(m) *Stinson v. Browning* (1866), L. R. 1 C. P. 321; 26 Digest 436, 1537.

(n) *Stinson v. Browning*, *supra*.

(o) *Hill v. Somerset* (1887), 51 J. P. 742; 26 Digest 436, 1538.

highway, to the injury of such highway, or to the injury, interruption or personal danger of any person travelling thereon."

These last words, beginning "to the injury," qualify the parts of the section here set out under paragraphs (13) to (17). They do not qualify any other part. See *ante*, p. 392. A surveyor of highways may be convicted hereunder for putting and leaving a heap of stones unprotected at night, and may also be guilty of an offence under sect. 56 (*p*). It is not necessary to prove that any person was endangered or interrupted, and a conviction on a summons for unlawfully laying a quantity of rubble upon a highway to the interruption or personal danger of any person travelling thereon is not bad for duplicity, because the section creates one offence only (*q*). But if steps are taken to see that no person could be endangered, there is no offence (*r*). [921]

(16) "Or shall suffer any filth, dirt, lime, or other offensive matter or thing whatsoever, to run or flow into or upon any highway from any house, building, erection, lands, or premises adjacent thereto." See note under paragraph (15).

The words "other offensive thing" are to be construed *ejusdem generis* with those mentioned, and will not include the drip of rainwater from the eaves of a house, which the owner refused to do anything to prevent. It was also held in the same case that the owner could not be said to have wilfully caused the offence (*s*). [922]

(17) "Or shall in any way wilfully obstruct the free passage of any such highway." See note under paragraph (15).

Obstruction to the way being proved, the evidence of persons who were not inconvenienced is not relevant (*t*). Causing a crowd to assemble by singing hymns and delivering addresses may be an offence under this part of the section (*u*). Where appellant marched at the head of a band into an open space which was a highway, and thereby collected a crowd which obstructed that part of the highway, the magistrate convicted him under this part of the section although there was a passage round the crowd available for traffic, considering that appellant had no right to appropriate any part of the highway. The court held that the magistrate was justified on the evidence in convicting (*a*). Merely suffering trees and undergrowth to grow so as to obstruct the highway, *e.g.* a bridle-path, is not an offence under these words, because such conduct cannot be called wilful obstruction (*b*). But it is not essential that there should be an act of commission, and a person was, therefore, held to have been rightly convicted under this head who failed to remove after notice an obstruction caused by his soil slipping from the banks on to the highway (*c*).

Whether a person wilfully causes an obstruction in a thoroughfare is in each case a question of degree, depending on the particular facts. In a case (*d*) under the Metropolitan Police Act, 1839, the appellant placed a truck in the roadway opposite a house for the purpose of

(*p*) *Fearnley v. Ormsby* (1879), 4 C. P. D. 136; 26 Digest 416, 1345.

(*q*) *Smith v. Perry*, [1906] 1 K. B. 262; 26 Digest 414, 1338.

(*r*) *Lees v. Stone* (1919), 88 L. J. (K. B.) 1159; 26 Digest 434, 1523.

(*s*) *Crossdill v. Ratcliff* (1862), 26 J. P. 165; 26 Digest 415, 1343, but as to this latter point, see *Gully v. Smith* (1883), 12 Q. B. D. 121; 26 Digest 416, 1346.

(*t*) *Read v. Perrett* (1876), 1 Ex. D. 349; 26 Digest 513, 2175.

(*u*) *Back v. Holmes* (1887), 56 L. T. 713; 26 Digest 416, 1348.

(*a*) *Horner v. Cadman* (1886), 55 L. J. (M. C.) 110; 26 Digest 416, 1347.

(*b*) *Walker v. Horner* (1875), 1 Q. B. D. 4; 26 Digest 416, 1344.

(*c*) *Gully v. Smith*, *supra*.

(*d*) *Dunn v. Holt* (1904), 73 L. J. (K. B.) 341; 26 Digest 415, 1340.

removing dust by a patent vacuum process. The truck was two feet eight inches wide, the carriageway thirty feet wide. The truck remained there for several hours during the day. The magistrate found that both the purpose and time were reasonable, the time and space occupied not excessive, but that the system of cleaning was not necessary to the ordinary comfort of life, and was calculated by its noise and the collection of people attracted by it, to cause discomfort to occupiers and to passengers. He also found that there was sufficient width of road left for traffic, and there was no evidence that any passenger was incommoded. It was held that there was no evidence on these facts of a wilful obstruction in contravention of sect. 54 (6) of the Metropolitan Police Act, 1839 (*e*). [923]

To constitute the offence of wilfully causing an obstruction in a thoroughfare within sect. 28 of the Town Police Clauses Act, 1847 (*f*), there must be an unreasonable use of the thoroughfare, though it is not necessary that any person should be actually obstructed. To leave two horses and carts standing unattended for five minutes at the side of a main thoroughfare 25 yards wide in such circumstances that vehicles requiring to pass them had to draw on to tram-lines and thus obstruct tramcars, is not such an unreasonable use of the highway as to be an offence within the section (*g*). Nor is a reasonable user for loading and unloading vans a nuisance (*h*).

The mere fact that a piece of ground, part of a public highway, has for twenty years been used by an innkeeper for the standing of vehicles belonging to his guests, is no answer to a complaint of obstruction under sect. 72 of the Highway Act, 1835 (*i*).

Where a person taking part in a street procession is charged with the statutory offence of "wilfully preventing and interrupting the free passage of persons and carriages," the real question for the magistrates to decide is whether or not the user of the street was under the circumstances reasonable. The fact that the natural result of such a procession was to cause an obstruction is not sufficient to justify a conviction (*k*). [924]

MISCELLANEOUS NUISANCES UNDER TOWN POLICE CLAUSES ACT, 1847

Those provisions of the Town Police Clauses Act, 1847, which deal with obstructions and nuisances in the streets are incorporated in boroughs and urban districts with P.H.A., 1875, by sect. 171 of that Act (*l*), as well as by a large number of local Acts. The incorporated sections which are within the scope of this article are sects. 21—29 of the Act (*m*). [925]

Processions, etc.—The council may prevent obstructions in streets owing to processions, etc., or in the neighbourhood of theatres and places of public resort, by making an order as to the route to be observed (*n*). [926]

(*e*) 19 Statutes 120.

(*f*) *Ibid.*, 38. See *post*, p. 399.

(*g*) *Gill v. Carson and Nield*, [1917] 2 K. B. 674 ; 26 Digest 415, 1339.

(*h*) *A.-G. v. Smith (W. H.) & Sons* (1910), 103 L. T. 96 ; 26 Digest 425, 1443.

(*i*) *Gerring v. Barfield* (1864), 16 C. B. (N. S.) 597 ; 26 Digest 441, 1585.

(*k*) *Lowdens v. Keaveney* (1902), 67 J. P. 378 ; 26 Digest 427, *s*.

(*l*) 13 Statutes 696.

(*m*) 19 Statutes 36—43.

(*n*) Act of 1847, s. 21 ; 19 Statutes 36.

Traffic during Divine Service.—The council may make orders at the request of ministers, etc., of places of public worship for regulating traffic in the neighbourhood of such places during the hours of divine service (*o*). [927]

Stray Cattle.—Stray cattle in any street may be impounded, if no person is in charge of them, and the owner must pay a penalty and the expenses of impounding and keeping them (*p*). Power to sell the stray cattle is given, if such penalty and expenses be not paid within three days after impounding (*q*). Penalties are inflicted for pound breach (*r*); and a pound may be provided by the council (*s*). [928]

Various Street Offences under sect. 28.—Every person who in any street, to the obstruction, annoyance, or danger of the residents or passengers, commits any of the following offences, is liable to a penalty not exceeding 40s. for each offence, or, in the discretion of the justice before whom he is convicted, may be committed to prison for a period not exceeding fourteen days, and any constable or other officer must take into custody, without warrant, and forthwith convey before a justice, any person who within his view commits any such offence (*t*).

It would appear that the acts referred to must constitute an annoyance to come within the section (*u*). But it is not necessary to call the persons who have been actually annoyed (*a*).

To avoid repetition it may be mentioned that many of the cases cited under sect. 72 of the Highway Act, 1835 (*b*), are useful in construing sect. 28 of the Act of 1847.

The offences are as follows :

(1) "Every person who exposes for show, hire, or sale (except in a market or market place or fair lawfully appointed for that purpose), any horse or other animal, or exhibits in a caravan or otherwise, any show or public entertainment, or shoes, bleeds or farries any horse or animal (except in case of accident), or cleans, dresses, exercises, trains, or breaks, or turns loose any horse or animal, or makes or repairs any part of any cart or carriage (except in case of accidents where repair on the spot is necessary)."

(2) "Every person who suffers to be at large any unmuzzled ferocious dog, or sets on or urges any dog or other animal to attack, worry, or put in fear any person or animal."

(3) "Every owner of any dog who suffers such dog to go at large, knowing or having reasonable ground for believing it to be in a rabid state, or to have been bitten by any dog or other animal in a rabid state."

(4) "Every person who after public notice given by any justice, directing dogs to be confined on account of suspicion of canine madness, suffers any dog to be at large during the time specified in such notice."

(5) "Every person who slaughters or dresses any cattle, or any part thereof, except in the case of any cattle overdriven which may have met with any accident, and which for the public safety or other reasonable cause ought to be killed on the spot."

(*o*) Act of 1847, s. 22; 19 Statutes 36.

(*q*) *Ibid.*, s. 25.

(*s*) *Ibid.*, s. 27.

(*u*) See *Allen v. Baldock* (1867), 31 J. P. 311; 26 Digest 426, 1448.

(*a*) *Woolley v. Corbishley* (1860), 24 J. P. 773; 26 Digest 422, 1409; *Read v. Perrett* (1876), 1 Exch. D. 349; 26 Digest 513, 2175.

(*b*) 9 Statutes 86, 91; see *ante*, pp. 391-397.

(*p*) *Ibid.*, s. 24.

(*r*) *Ibid.*, s. 26.

(*t*) *Ibid.*, s. 28.

(6) "Every person having the care of any waggon, cart, or carriage who rides on the shafts thereof, or who without having reins, and holding the same, rides upon such waggon, cart, or carriage, or on any animal drawing the same, or who is at such a distance from such waggon, cart, or carriage, as not to have due control over every animal drawing the same, or who does not, in meeting any other carriage, keep his waggon, cart, or carriage, to the left or near side, or who in passing any other carriage does not keep his waggon, cart, or carriage, on the right or off side of the road (except in cases of actual necessity, or some sufficient reason for deviation), or who, by obstructing the street, wilfully prevents any person or carriage from passing him, or any waggon, cart, or carriage under his care."

(7) "Every person who at one time drives more than two carts or waggons, and every person driving two carts or waggons who has not the halter of the horse in the last cart or waggon securely fastened to the back of the first cart or waggon, or has such halter at a greater length from such fastening to the horse's head than four feet."

(8) "Every person who rides or drives furiously any horse or carriage (c), or drives furiously any cattle."

(9) "Every person who causes any public carriage, sledge, truck, or barrow, with or without horses or any beast of burden, to stand longer than is necessary for loading or unloading goods, or for taking up or setting down passengers (except hackney carriages, and horses and other beasts of draught or burden standing for hire in any place appointed for that purpose by the [urban authority] or other lawful authority), and every person who by means of any cart, carriage, sledge, truck, or barrow, or any animal, or other means wilfully interrupts any public crossing, or wilfully causes any obstruction in any public footpath or other public thoroughfare" (d).

(10) "Every person who causes any tree or timber or iron beam to be drawn in or upon any carriage, without having sufficient means of safely guiding the same."

(11) "Every person who leads or drives any horse or other animal, or draws or drives any carriage or cart, sledge, truck, or barrow, upon any footway of any street, or fastens any horse or other animal so that it stands across or upon any footway."

(12) "Every person who places or leaves any furniture, goods, wares, or merchandise, or any cask, tub, basket, pail, or bucket, or places or uses any standing place, stool, bench, stall, or showboard, on any footway, or who places any blind, shade, covering, awning, or other projection over or along any such footway unless such blind, shade, covering, awning, or other projection is eight feet in height at least in every part thereof from the ground."

(13) "Every person who places, or hangs up or otherwise exposes to sale any goods, wares, merchandise, matter, or thing whatsoever, so that the same project into or over any footway, or beyond the line of any house, shop, or building at which the same are so exposed, so as to obstruct or incommode the passage of any person over or along such footway."

(c) A bicycle is a carriage, see *Taylor v. Goodwin* (1879), 4 Q. B. D. 228; 26 Digest 438, 1553.

(d) See *Ball v. Ward* (1875), 40 J. P. 213; 26 Digest 416, 1351; and *R. v. Long* (1888), 52 J. P. 630; 26 Digest 456, 1724.

(14) "Every person who rolls or carries any cask, tub, hoop, or wheel, or any ladder, plank, pole, timber, or log of wood, upon any footway, except for the purpose of loading or unloading any cart or carriage, or of crossing the footway."

(15) "Every person who places any line, cord, or pole across any street, or hangs or places any clothes thereon."

(16) "Every common prostitute or nightwalker loitering and importuning passengers for the purpose of prostitution."

(17) "Every person who wilfully and indecently exposes his person."

(18) "Every person who publicly offers for sale or distribution, or exhibits to public view any profane, indecent, or obscene book, paper, print, drawing, painting, or representation, or sings any profane or obscene song or ballad, or uses any profane or obscene language."

(19) "Every person who wantonly discharges any firearm, or throws or discharges any stone or other missile, or makes any bonfire, or throws or sets fire to any firework."

(20) "Every person who wilfully and wantonly disturbs any inhabitants by pulling or ringing any door bell, or knocking at any door, or who wilfully and unlawfully extinguishes the light of any lamp."

The mere fact of a man being instructed to deliver papers at the house of a third person is no answer to a complaint under this head if the knocking and ringing is violent and at an unreasonable hour of the night (*e*).

(21) "Every person who flies any kite, or who makes or uses any slide upon ice or snow."

(22) "Every person who cleanses, hoops, fires, washes, or scalds any cask or tub, or hews, saws, bores, or cuts any timber or stone, or slacks, sifts, or screens any lime."

(23) "Every person who throws or lays down any stones, coals, slate, shells, lime, bricks, timber, iron, or other materials (except building materials so inclosed as to prevent mischief to passengers)."

(24) "Every person who shakes or beats any carpet, rug, or mat (except door-mats shaken or beaten before the hour of eight in the morning)."

(25) "Every person who fixes or places any flower-pot or box, or other heavy article, in any upper window, without sufficiently guarding the same against being blown down."

(26) "Every person who throws from the roof or any part of any house or other building any slate, brick, wood, rubbish, or other thing except snow thrown so as not to fall on any passenger."

(27) "Every occupier of any house or other building, or other person, who orders or permits any person in his service to stand on the sill of any window, in order to clean, paint, or perform any other operation upon the outside of such window, or upon any house or other building within the said limits, unless such window be in the sunk or basement storey."

(28) "Every person who leaves open any vault or cellar, or the entrance from any street to any cellar or room underground, without a sufficient fence or handrail, or leaves defective the door, window, or other covering of any vault or cellar, or who does not sufficiently fence any area, pit, or sewer left open, or who leaves such open area,

pit, or sewer, without a sufficient light after sunset to warn and prevent persons from falling thereinto."

(29) "Every person who throws or lays any dirt, litter, or ashes, or night-soil, or any carrion, fish, offal, or rubbish, on any street, or causes any offensive matter to run from any manufactory, brewery, slaughterhouse, butcher's shop, or dunghill, into any street. Provided always, that it shall not be deemed an offence to lay sand or other materials in any street in time of frost to prevent accidents, or litter or other suitable materials to prevent the freezing of water in pipes, or in case of sickness to prevent noise, if the party laying any such things causes them to be removed as soon as the occasion for them ceases."

(30) "Every person who keeps any pigsty to the front of any street, not being shut out from such street by a sufficient wall or fence, or who keeps any swine in or near any street, so as to be a common nuisance."
[929]

Drunkenness and Disorderly Conduct.—See title OFFENSIVE BEHAVIOUR.

For general principles as to abatement and proceedings in respect of nuisances, see title NUISANCES.

LONDON

General Position.—Under the common law the position in London is identical with that of the provinces.

The L.C.C. have the same powers as other county councils under sect. 11 of the L.G.A., 1888 (*f*), but the provisions as regards main roads, although still applying to London, are of little practical significance, since in London there are no main roads. Sect. 26 of the L.G.A., 1894 (*g*), does not extend to London. The provisions of the Highway Acts as regards highway nuisances are applicable to the metropolis. Sect. 112 of the Highway Act, 1835 (*h*), further contains an express saving for the Metropolitan Paving Act, 1817 (*i*), which also deals with certain highway nuisances in the metropolis (see below). The Barbed Wire Act, 1893 (*k*), also applies to any sanitary authority in London. Bye-laws dealing with behaviour in streets have been made by the L.C.C. and metropolitan borough councils (see title GOOD RULE AND GOVERNMENT). The provisions of the Road Traffic Acts as to offences in connection with matters of this kind are applicable to London. Various offences which are of the character of nuisances may now be referred to. [930]

In London, including the City.—Sect. 64 of the Metropolitan Paving Act, 1817 (*i*), constitutes as offences, the beating of carpets in any street or public place; breaking-in horses in any street or public place; riding horses in any street or public place for exercise, etc., or for sale, other than by passing through it; placing carts, barrows or casks, etc., on footways; riding or leading horses, etc., on footways. These offences are punishable by a fine. Sect. 65 of the Act of 1817, prohibits the placing on the carriageway or footway of stalls, baskets or wares and the hooping and washing of casks or other vessels; the standing of vehicles on carriageways (except those licensed to stand for hire) longer than is necessary for loading, unloading, harnessing or

(*f*) 10 Statutes 693.

(*g*) *Ibid.*, 795.

(*h*) 9 Statutes 111.

(*i*) Usually called Michael Angelo Taylor's Act; 57 Geo. 3, c. xxix.

(*k*) 9 Statutes 206.

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waiting for passengers when actually hired; the placing of building materials or other things unfenced on carriage or footways; the hanging or exposure of meat or offal from houses over any part of the carriage or footway or any area; the placing of unsecured garden pots on the front of houses. On failure to remove the offending object, after notice, a fine may be imposed and the article may be forfeited. Sect. 69 of the Act of 1817 prescribes a fine for the slaking of lime in streets. Sect. 71 provides that holes excavated for vaults shall be enclosed and imposes a fine for failure. It will be seen that the Act of 1817 deals with many of the nuisances which are forbidden by sect. 28 of the Town Police Clauses Act, 1847 (*l*). [931]

Sect. 16 (1) of the P.H. (London) Act, 1891 (*m*), requires sanitary authorities to make bye-laws with regard to snow, ice, salt, dust, ashes, rubbish, offal, carrion, fish, filth or any other matter in any street. Sect. 16 (2) allows the L.C.C. to make bye-laws as to the removal of faecal or offensive matter by road so as to prevent a nuisance, but the bye-laws are not to apply to the City (sect. 133). The section provides that the placing of sand and litter in streets to prevent accidents or freezing or in case of illness are not to be made offences under the bye-laws, and sect. 17 of the Act (*n*) provides that swine shall not be permitted to stray or go about in any street or public place, prescribes a fine and provides for the seizure and removal of the animals by a constable. Under sect. 36 of the Act (*o*) scavenging by a sanitary authority does not relieve any person from a fine for placing dung on the foot or carriageways.

The removal of refuse in streets from houses is now dealt with in regulations of the M. of T. made under the London Traffic Act, 1924 (*p*). The L.C.C. have special powers under sect. 22 of P.H. (London) Act, 1891 (*q*), for dealing with nuisances created by sanitary authorities in the removal, etc., of house or street refuse.

Sect. 144 of the London Building Act, 1930 (*r*), prohibits on pain of a fine the establishment of offensive businesses within forty feet of a public way. [932]

In London outside the City.—Sect. 221 of the London Building Act, 1930 (*s*), prohibits the erection by unauthorised persons of obstructions and encroachments in regard to streets and the impeding of traffic. The local authority may demand the removal of the obstruction and on failure may remove it at the expense of the offender. Sect. 222 provides for penalties. Sect. 54 of the L.C.C. (General Powers) Act, 1924 (*t*), imposes a penalty for suspending over the carriageway or other public way, in any metropolitan borough, flags, banners, etc., for the purpose of advertisement, etc., without the consent of the borough council. [933]

In Metropolitan Police District (excluding the City).—The under-mentioned offences are dealt with in the statutes indicated below:

Street Musicians.—Playing or singing after request by householder to leave for reasonable cause (Metropolitan Police Act, 1864, sects. 1, 2) (*u*).

(*l*) See *ante*, pp. 398–401.

(*n*) *Ibid.*, 1035.

(*p*) The London Traffic (Collection of Refuse) Regulations, 1931; S.R. & O., 1931, No. 27.

(*q*) 11 Statutes 1040.

(*s*) *Ibid.*, 319.

(*u*) 19 Statutes 153.

(*m*) 11 Statutes 1034.

(*o*) *Ibid.*, 1047.

(*r*) 23 Statutes 293.

(*t*) 11 Statutes 1366.

Loitering.—Between sunset and 8 a.m. in highway or public place (Metropolitan Police Act, 1839, sect. 64) (*a*).

Placards or Advertisements.—Carrying in a thoroughfare or public place to obstruction or annoyance of inhabitants or passengers (London Hackney Carriage Act, 1853, sect. 16) (*b*).

The Metropolitan Police Act, 1839, deals in sect. 54 (*c*) with the following offences by imposing fines, and in sect. 62 (*d*), by the award of compensation to persons aggrieved, when committed in any thoroughfare or public place to the annoyance of the inhabitants or passengers :

Animals.—Exposing for show or sale (except in a market lawfully appointed), foddering, farrying (except in cases of accident), grooming, training or breaking-in.

Caravans containing Animals or Entertainment.—Showing.

Carts and Carriages.—Cleaning or repair, except when repair on the spot is necessary.

Horses or Cattle.—Turning loose.

Dogs, Ferocious and Unmuzzled.—Turning loose or suffering to be at large ; setting a dog or other animal to attack or worry any person or animal.

Cattle.—Negligence or ill-usage in driving, or pelting or hunting driven cattle.

Carts and Carriages.—Driving without holding reins or without having complete control ; driving to the common danger.

Vehicles.—Allowing to stand longer than necessary or wilfully causing an obstruction.

Footways.—Riding or driving on or fastening any animal so that it can stand across or upon ; placing casks, ladders, show-boards, etc., on, except for loading or unloading vehicles or crossing footways.

Divine Service.—Public processions.—Failing to comply with regulations of police commissioners as to route, etc.

Building, Walls, Fences, Trees and Seats.—Damaging.

Buildings, Walls, Fences, etc.—Billposting (without consent of owner or occupier), writing on or defacing.

Prostitutes.—Soliciting by.

Obscene Publications, etc.—Selling or singing obscene songs, making obscene writings or using profane, indecent or obscene language. Insulting behaviour.

Noisy Instruments.—Using for purpose of attracting persons together, etc., or for hawking, etc.

Firearms and Fireworks.—Discharging.

Stones.—Throwing or discharging.

Bonfires.—Making.

Door-bells and Knockers on Doors.—Using without lawful excuse to disturbance of any inhabitant.

Lamps.—Wilfully and unlawfully extinguishing.

Games, Kites, Slides, etc.—Playing at or using to common danger.

(All the above-mentioned are dealt with in sect. 54.)

Sect. 60 of the Act of 1839 (*e*) makes the following acts offences if committed in any street or public place :

Casks, etc.—Washing or firing.

(*a*) 12 Statutes 772.

(*b*) 19 Statutes 148.

(*c*) *Ibid.*, 119. This section and s. 60 of the Act cover much the same ground as s. 28 of the Town Police Clauses Act, 1847 (see *ante*, p. 398), but together contain 25 paras. as against the 30 paras. of s. 28 of the Act of 1847.

(*d*) 12 Statutes 771.

(*e*) 19 Statutes 123.

Timber or Stone.—Sawing.

Lime.—Screening or slaking.

Metals, Coal, Stones, Bricks, etc.—Placing in thoroughfare, except building materials properly enclosed.

Carpets and Mats.—Beating, except doormats before 8 a.m.

Dirt, litter, etc.—Depositing, except sand, etc. in time of frost or litter to prevent noise in sickness.

Pigsties.—Keeping, if not shut off, or keeping swine so as to be a common nuisance.

Footways.—Failure of occupier to sweep and cleanse.

Sale in Parks or Public Gardens, etc.—Exposing articles without the consent of the owner or other person authorised to consent.

Exposing articles for sale upon or so as to hang over carriage or footway on outside of house or shop so as to cause annoyance or obstruction.

Blinds, Awnings, etc.—Setting up so as to cause annoyance or obstruction.

Openings to Cellars, etc.—Leaving open or unprotected. [934]

Within Six Miles of Charing Cross.—The Metropolitan Streets Act, 1867 (*f*), as extended by sect. 2 of the Metropolitan Streets Act, 1885 (*g*), so as to apply to limits within the above distance of Charing Cross, makes provision as to the following offences :

Goods.—Deposit in streets (sect. 6) (*h*). But this does not apply to costermongers, etc., carrying on business in accordance with police regulations (see sect. 1 of the Metropolitan Streets Act Amendment Act, 1867 (*i*), and title STREET TRADING).

Coals.—Loading and unloading across footway within certain special limits between 10 a.m. and 6 p.m. (sects. 10, 15) (*k*).

Casks.—Lowering or drawing up (except wines and spirits in casks) across the footway by machinery within the special limits and the same hours. (*ibid*).

Advertisements.—Carrying or distributing, except where approved by the police and except sale of newspapers (sect. 9) (*l*). [935]

City of London.—The City of London is included in the radius of six miles from Charing Cross (see above).

The City of London (Street Traffic) Act, 1909 (*m*), provides that the corporation may make regulations as to traffic, use of streets by traders, loading and unloading of coal, coke and casks, and provides penalties for the obstruction of streets.

Provisions comparable to those above-mentioned which apply to the metropolitan police district are in force in the City by virtue of the City of London Police Act, 1839 (*n*). [936]

(*f*) 19 Statutes 154—162.

(*h*) *Ibid.*, 155.

(*k*) *Ibid.*, 156, 158.

(*m*) 9 Edw. 7, c. lxvii. (a local Act).

(*n*) 2 & 3 Vict. c. xciv. ; See note at 12 Statutes 738.

(*g*) *Ibid.*, 168.

(*i*) *Ibid.*, 163.

(*l*) *Ibid.*, 156.

HIGHWAYS

See ROADS CLASSIFICATION.

HIGHWAYS, EXTINCTION OF

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See also titles : DIVERSION AND STOPPING UP OF HIGHWAYS ;
HIGHWAY NUISANCES ;
HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO.

Introductory.—The common law rule as to highways is “once a highway always a highway.” The public cannot release their rights, there is no authority that can bind them in a purported release of such rights, and there is no extinctive presumption of law or prescription arising from the non-exercise of highway rights (*a*).

There are, however, four ways in which a right of public highway can become extinguished, viz. : (1) by stopping up or diverting of the way by writ of *ad quod damnum* ; (2) by natural causes ; (3) by stopping up and diversion under the procedure of the Highways Acts ; and (4) by diversion where the original dedication of the highway was made subject to a right for future diversion.

The second only of these is dealt with in this article. The first is now obsolete, and the third and fourth are dealt with under the title DIVERSION AND STOPPING UP OF HIGHWAYS. [937]

A highway may be extinguished by the destruction of the land over which it passes. This does not mean destruction of the pathway, the right of highway being an easement of passage and continuing over the land notwithstanding any such destruction. Therefore it does not destroy the highway to plough it up (*b*) ; although the ploughing will be a nuisance unless the right to do so was reserved on dedication, but a right is frequently reserved to plough, in due course of husbandry, the

(*a*) *Dawes v. Hawkins* (1860), 8 C. B. (N. S.) 848 ; 26 Digest 295, 270. The rights are not lost by disuse, *Turner v. Ringwood Highway Board* (1870), L. R. 9 Eq. 418 ; 26 Digest 315, 476, or by inclosure and subsequent holding without acknowledgment for the full period of the Statute of Limitations, *St. Ives Corpn. v. Wadsworth* (1908), 72 J. P. 73 ; 26 Digest 261, 14. Long disuse of a highway does not deprive the public of their rights over it, *R. v. St. James, Taunton (Inhabitants)* (1812-3), Selwyn N. P., 13th ed., p. 1264 ; *Harvey v. Truro R.D.C.*, [1903] 2 Ch. 638 ; 26 Digest 313, 454.

(*b*) *Griesly's Case* (1669), 1 Ventr. 4 ; 26 Digest 420, 1392.

land over which a highway runs (c). It is only where the land itself is physically destroyed that the highway is extinguished. [938]

Inroads of the Sea.—Where the actual site of a road, whether natural ground (d) or an artificial embankment (e) has been destroyed by the sea, the highway is destroyed and any liability to repair the same ceases.

In *R. v. Paul (Inhabitants)* (f), a public right of way existed along the top of an artificial sea-wall or embankment, part of which was washed away by the sea, and the inhabitants of the parish were indicted for non-repair. MAULE, J. directed the jury that the parish were not liable to rebuild the wall, and pointed out that "the interruption of the passage is not from the want of repair, but from the sea having washed away the wall or embankment, and there is no longer anything for them to repair."

In *R. v. Bamber* (g), the defendant held lands adjoining the sea; an ancient highway passed over the lands, and from time immemorial had been restored and repaired by the owners of the adjoining lands; except that as the sea gradually encroached and portions of the land over which the highway ran became impassable, the owners had gradually removed the highway and appropriated others of their lands for its site, so that the public had uninterrupted use of it, and the new portion was repaired with the old as part of the ancient highway. In March, 1842, the sea destroyed the highway as it then stood, but this was not the highway originally existing, the site of which had by that time been covered by the sea. It was held by the court that the defendant's liability had ceased. LORD DENMAN, C.J. said at p. 287, "Both the road which the defendant is charged with liability to repair, and the land over which it passes, are washed away by the sea. To restore the road as he is required to do he must create part of the earth anew. . . . Here all the materials of which a road could be made had been swept away by the act of God. Under those circumstances can the defendant be liable for not repairing the road?"

The judgments in this case seem to establish that where there is a gradual erosion of a cliff highway, an owner liable to repair it must make good, not only the repairs, but the ground lost so far as is necessary to make the highway passable; but that in case of a sudden destruction of the whole *uno actu*, the effect is to extinguish his liability. But in *Boulwood v. Paignton U.D.C.* (h) it was held that if erosion gradually covers the whole site of the original footpath, and the public wander over the adjoining land but without any indication of an intention of the owner to dedicate further portions of the land, the right of passage and the liability to repair are extinguished; and there is no authority, as where the way becomes foundrous (see title HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO), for deviation on to the nearest land. [939]

(c) *Brackenborough v. Thorsby* (1869), 19 L. T. 692; 26 Digest 416, 1356; *Mercer v. Woodgate* (1869), L. R. 5 Q. B. 26; 26 Digest 417, 1357; *Harrison v. Danby* (1870), 34 J. P. 759; 26 Digest 417, 1358; *Arnold v. Blaker* (1871), L. R. 6 Q. B. 433; 26 Digest 417, 1359; *Arnold v. Holbrook* (1873), L. R. 8 Q. B. 96; 26 Digest 319, 515; and see *Dennis & Sons, Ltd. v. Good* (1918), 88 L. J. (K. B.) 388; 26 Digest 417, 1361.

(d) *R. v. Bamber* (1843), 5 Q. B. 279; 26 Digest 371, 964; *R. v. Hornsea (Inhabitants)* (1854), Dears. C. C. 291; 26 Digest 372, 983.

(e) *R. v. Paul (Inhabitants)* (1840), 2 Mood. & R. 307; 26 Digest 376, 1010.

(f) *Supra*.

(g) (1843), 5 Q. B. 279; 26 Digest 371, 964.

(h) (1928), 92 J. P. 98; Digest (Supp.).

In *R. v. Hornsea (Inhabitants)* (i), the inhabitants of the parish were indicted for non-repair of a highway which originally ran down to the sea at right angles to the shore, the land gently sloping to the water's edge. By successive encroachments of the sea, part of the land and part of the highway thereon were swept away, so that what was left was a perpendicular cliff 20 feet high, to the edge of which the former highway ran, but there terminated abruptly. It was held that there was no obligation on the parish to provide an available carriage road down to the beach, since that part of the highway no longer existed. MAULE, J. said, "The indictment says that there is a highway, and that it is out of repair; but the case finds distinctly that that part of the road which the indictment alleges to be out of repair has, in fact, been washed away by the sea, so that the subject of repair is not in existence. All that exists of the road is in good repair. . . . If there be no longer any highway, if there be nothing which can be effectually restored by what may be fairly termed repairs, the case does not exist in which the liability is cast on the parish." [940]

Landslips.—The road may also be destroyed by the disappearance of the site in a landslip. In *R. v. Greenhow (Inhabitants)* (k) a highway ran along the slope of a hill several hundred feet above the level of a valley beneath. Two landslips occurred covering many acres of land, and part of the highway was carried away into the valley below and its place filled up with earth, stones and other debris, to such an extent that there was no trace left of the old metalled road, although the line of it was known and admitted. Since evidence was forthcoming that it was practicable to form a road along the old track, of a similar character to the adjoining parts of the old road, it was held on the facts that the road was not so completely destroyed as to exempt the parish from their liability to repair it. BLACKBURN, J. said "Whether a road has been destroyed or not is a question of more or less, and it is a matter of common sense that where the road has been swept away and occupied by the sea, you cannot call on the parish to repair it, or in the case of a sea-wall where the public have acquired a right to walk on the top of the wall, the parish could not be compelled to rebuild the wall if it were washed away by the sea. On the other hand, it would be equally impossible to say that, when, in consequence of a landslip or one of those floods which frequently occur in certain districts, the surface of a metalled road is filled up or covered over, the parish is relieved from liability. The same observations apply to the case where a quantity of gravel or debris is thrown from above on a highway, and the line of the old road remains as before. . . . I think that in drawing such an inference, it would always be a question of more or less, and for my part, the operations which are described as necessary do not seem to me to involve any enormous difficulty. Therefore, in drawing my inferences of fact, I think it cannot be said that the road was annihilated, and that it was impossible in a commercial sense to repair it, that is, that it would cost more than the subject-matter of repair is reasonably worth." [941]

Loss of Access.—A length of highway, though not itself expressly diverted or stopped up, will be extinguished if public access to it at

(i) (1854), Dears. C. C. 291 ; 26 Digest 372, 983.

(k) (1876), 1 Q. B. D. 703 ; 26 Digest 371, 966.

both ends is cut off by the destruction or lawful stopping up of the only highways leading into it. In *Bailey v. Jamieson* (*l*) a public footpath led through certain woods from one highway to another, and the two highways were stopped up under the statutory procedure. It was held that the right of public highway over the footpath was gone. Lord COLERIDGE, C.J. said, "To constitute a highway, there must be some notion of a passage which begins somewhere and ends somewhere, and along which the public have a right to drive or to walk from its beginning to its end. Here, that notion is entirely absent. By proper authority this way has become inaccessible at both ends. It remains a track which no member of the public can reasonably get upon. . . . Its character of a public highway is altogether gone." But this only applies when the access is cut off at both ends, and if it is cut off at one end only and the road converted into a *cul-de-sac*, it does not cease to be a highway (*m*). [942]

Irretrievable Destruction through Human Agency.—Any unauthorised interference with a highway is a nuisance (see title HIGHWAY NUISANCES), and it follows that the destruction of a highway by human agency and without statutory authority does not destroy the public right. The destruction of a highway by a landslip artificially induced through blasting operations might destroy the liability of the owner of the soil to repair it *ratione tenuræ*, but would render the operators liable to an action for damages for the nuisance. It would seem, however, that blasting operations carried out by the owner of the soil would not destroy his liability, and he could be required to restore the highway. [943]

(*l*) (1876), 1 C. P. D. 329; 26 Digest 476, 1337.

(*m*) *Gwyn v. Hardwicke* (1856), 1 H. & N. 49; 26 Digest 264, 45; *R. v. Burney* (1875), 31 L. T. 823; 26 Digest 264, 46.

HIGHWAYS, RIGHTS OF PRIVATE PERSONS AS TO

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See also titles :

HIGHWAY NUISANCES ;
MISFEASANCE AND NON-FEASANCE ;
NEGLIGENCE ;

OBSTACLES ON HIGHWAYS ;
RIBBON DEVELOPMENT RESTRICTION ;
TREES AND HEDGES.

1. RIGHTS OF THE PUBLIC TO PASSAGE AND DEVIATION

Introductory.—The right of the public in a highway is an easement of passage only—a right of passing and re-passing (*a*). “In the King’s highway, the King has only the right of passage for him and his people, but the freehold and all the profits such as trees are in the lord of the soil” (*b*), but, except where the highway was the subject of a limited dedication only (see title DEDICATION AND ADOPTION OF HIGHWAYS), the public have the right to use the way for all purposes and at all times (*c*), so long as they only pass and re-pass. In *Dovaston v. Payne* (*d*), this right was referred to as an easement, but this description was severely criticised by Lord CAIRNS, L.J., in *Rangeley v. Midland Rail. Co.* (*e*) on the ground that there was no dominant tenement. In *Orr Ewing v. Colquhoun* (*f*) a passage in the speech of Lord GORDON suggests that the kingdom is the dominant tenement, but in *Harvekins v. Rutter* (*g*) Lord COLERIDGE held that, although the term “easement” is a convenient way of describing the rights of the public in connection with a highway, it was not strictly accurate in the absence of a dominant and servient tenement.

(*a*) Pratt and Mackenzie, Law of Highways (18th ed.), p. 2.

(*b*) *Anon.* (1468), Y. B. 8 Edw. 4, fo. 9, pl. 7 ; 26 Digest 316, 482 ; 1 Roll. Abr. 392, tit. “Chimin.”

(*c*) *Rouse v. Bardin* (1790), 1 Hy. Bl. 351 ; 26 Digest 316, 484.

(*d*) (1795), 2 Hy. Bl. 527 ; 26 Digest 316, 486.

(*e*) (1868), 3 Ch. App. 306 ; 26 Digest 316, 487.

(*f*) (1877), 2 App. Cas. 839, at p. 872 ; 26 Digest 316, 485.

(*g*) [1892] 1 Q. B. 668 ; 19 Digest 13, 26.

The right of the public does not include a right to race upon the highway (*h*), to hold meetings thereon (*i*), to linger for the purpose of interfering with the use of the adjoining land for shooting (*k*), or to watch race-horse trials (*l*) or to shoot game (*m*). To exceed the right of passage and re-passage is a nuisance, and the person so acting is a trespasser and liable to be proceeded against or removed from the highway. There is no right known to the law as a right to stray indefinitely over land, the only possible legal dedication being that of passage (*n*), but it has been suggested that there are certain rights of lingering provided that these are reasonably exercised (*o*); "For instance, if a man, while using a highway for passage, sat down for a time to rest himself by the side of the road, to call that a trespass would be unreasonable. Similarly, if a man took a sketch from the highway, I should say that no reasonable person would treat that as an act of trespass" (*p*), and an injunction to restrain persons from trespassing on a public highway for the purpose of catching moths, where there was no threat to infringe any rights of property and the persons in question desisted when requested to do so, was refused (*q*).

If a person is found using a highway for other purposes than those of passage, he will be presumed to have gone there for such purpose and not with a legitimate object, as the law judges his original intent by his subsequent actions (*r*), and as against the owner of the soil he will be treated as a trespasser (*s*). But only the owner of the soil can sue for the trespass (*t*). [944]

Extent of Right of Passage.—Sir Edward Coke thus classified highways (*u*). "There be three kinds of wayes whereof you shall reade

(*h*) *Sowerby v. Wadsworth* (1863), 3 F. & F. 734; 26 Digest 318, 498; *A.-G. v. Blackpool Corp.* (1907), 71 J. P. 478; 26 Digest 426, 1452. The promotion of or taking part in a race or trial of speed between motor vehicles on a public highway is now also a criminal offence under the Road Traffic Act, 1930, s. 13; 23 Statutes 622.

(*i*) *R. v. Cunninghame Graham and Burns* (1888), 4 T. L. R. 212; 26 Digest 318, 499, but such meetings are often tolerated if no inconvenience is thereby caused to others having equal rights. Nor does the fact that a public meeting is held upon a highway render it unlawful if otherwise lawful (*Burden v. Rigler*, [1911] 1 K. B. 337; 26 Digest 318, 503). See also *De Morgan v. Metropolitan Board of Works* (1880), 5 Q. B. D. 155; 11 Digest 88, 1077; *Llandudno U.D.C. v. Woods*, [1899] 2 Ch. 705; 26 Digest 262, 19; and *Brighton Corp. v. Packham* (1908), 72 J. P. 318; 44 Digest 77, 576.

(*k*) *Harrison v. Rutland (Duke)*, [1893] 1 Q. B. 142; 26 Digest 317, 491.

(*l*) *Hickman v. Maisey*, [1900] 1 Q. B. 752; 26 Digest 317, 492; *Coventry (Earl) v. Willes* (1863), 3 New Rep. 119; 26 Digest 317, 496.

(*m*) *R. v. Pratt* (1855), 4 E. & B. 860; 26 Digest 317, 494; *Mayhew v. Wardley* (1863), 14 C. B. (N. S.) 550; 26 Digest 317, 495.

(*n*) *Eyre v. New Forest Highway Board* (1892), 56 J. P., *per WILLS, J.*, at p. 518; 26 Digest 260, 5.

(*o*) *By PHILLIMORE, J.*, in *Hadwell v. Righton*, [1907] 2 K. B. 345; 2 Digest 233, 222.

(*p*) *Per A. L. SMITH, L.J.*, in *Hickman v. Maisey*, *supra*.

(*q*) *Fielden v. Cox* (1906), 22 T. L. R. 411; 26 Digest 318, 505.

(*r*) *Per COLLINS, L.J.*, in *Hickman v. Maisey*, *supra*.

(*s*) See *R. v. Pratt*, *supra*; *Mayhew v. Wardley*, *supra*; *Harrison v. Rutland (Duke)*, *supra*; *Hickman v. Maisey*, *supra*; *Fielden v. Cox*, *supra*; *Cox v. Burbridge* (1863), 13 C. B. (N. S.) 430; 2 Digest 233, 218; *Hadwell v. Righton*, *supra*; *Higgins v. Searle* (1909), 100 L. T. 280, C. A.; 2 Digest 234, 223 (a case of allowing cattle to stray on the highway).

(*t*) *Hadwell v. Righton*, *supra*.

(*u*) Co. Litt. 56a. In *R. v. Hammond* (1717), 10 Mod. Rep. 382; 26 Digest 262, 24, it was stated that Coke's last two classes of *regia via* and *communis strata* were synonymous expressions, signifying the same thing.

in our ancient bookes. First a footway, which is called *iter quod est jus eundi vel ambulandi hominis*; and this was the first way. The second is a footway and horseway, which is called *actus ab agendo*, and this vulgarly is called *packe* and *prime waye*, because it is both a footway, which was the first or *prime waye* and a *packe* or *drift way* also. The third is *via aditus*, which contains the other two, and also a cartway, etc., for this is *jus eundi, vehendi, et vehiculum et jumentum ducendi*; and this is twofold, viz. *regia via*, the King's highway for all men, *et communis strata*, belonging to a city or towne, or between neighbours and neighbours."

The rights of the public naturally vary according to which of the above types of highway is in question, though the general principle of limitation to rights of passage and re-passage runs through all three, the variation being between whether the public may pass on foot only, on foot or horseback, or by either of the two above methods and with carts or carriages in addition. In general, proof of a right of cartway or carriageway will establish a right for the passage of all carts or carriages. This right will also include a right of footway (a), and also of driftway and bridleway; and a right of driftway or bridleway will include a right of footway.

But exceptional cases exist where the wider right does not include the narrower, and these presumptions may be controlled and rebutted either by the provisions of an Act of Parliament or by the act of the person who dedicates the highway or grants the easement (see Vol. IV., p. 303, as to restricted dedication). Examples are: (1) An Act of Parliament may authorise the construction of a tramroad passable for carriages constructed in a particular manner, imposing a penalty on any person using the road on horseback; this will be a public highway to be used only by such carriages (b). (2) A towing-path alongside a canal or navigable river may be a highway to be used only for the purpose of towing barges or vessels, and there may be no general right of footway existing thereon, unless it has been acquired independently (c). (3) A right over a private way for the use of carts and carriages does not necessarily include a right to drive cattle, and there may be the same restriction in the case of a public carriageway (d). (4) There is no presumption, apart from evidence of user, that a public horseway necessarily includes a "driftway" in the sense of a public way for driving cattle (e).

The fact that a way is in fact too narrow, or is crossed by bridges or archways too low, to admit the passage of large vehicles, does not prevent the road from being a carriageway, and properly so described, the passage of such vehicles being perfectly lawful even though impossible (f). [945]

If a highway has once been set out under a statute or inclosure award, or has been expressly dedicated to and accepted by the public

(a) *Davies v. Stephens* (1836), 7 C. & P. 570; 26 Digest 289, 219; *R. v. Hatfield (Inhabitants)* (1736), Lee temp. Hardwicke 315; 26 Digest 265, 55; *Cowling v. Higginson* (1838), 4 M. & W. 245; 19 Digest 112, 723; *Higham v. Rabett* (1839), 5 Bing. (N. C.) 622; *Wells v. London, Tilbury and Southend Rail. Co.* (1877), 5 Ch. D. 126; 26 Digest 261, 17; *Newcomen v. Coulson* (1877), 5 Ch. D. 133.

(b) *R. v. Severn and Wye Rail. Co.* (1819), 2 B. & Ald. 646; 26 Digest 265, 57.

(c) *Ibid.*, per BAYLEY, J.; *Winch v. Thames Conservators* (1872), L. R. 7 C. P. 458, per Bovill, C.J., at p. 471; 26 Digest 262, 35.

(d) *Ballard v. Dyson* (1808), 1 Taunt. 279; 26 Digest 265, 58.

(e) See *Trickey v. Yeandall* (1824), 9 Moore (C. P.) 55; 19 Digest 112, 721.

(f) *R. v. Lyon* (1825), 5 Dow. & Ry. (K. B.) 497; 26 Digest 265, 59.

as a particular kind of way, no question can arise as to what are their minimum rights over it, because these cannot be diminished by non-user (*g*). Where a highway originates in a presumed dedication (see title DEDICATION AND ADOPTION OF HIGHWAYS), it is a question of fact as to the kind of traffic for which it was dedicated, and regard will be had to the character of the way and the nature of the user prior to the date at which dedication was inferred; a right of passage, once acquired, will extend to modern forms of traffic reasonably similar to those for which the highway was originally dedicated, provided that they do not impose on the owner of the soil a greater burden, or on the persons exercising the right of passage a greater inconvenience, than does user in the manner originally contemplated (*h*). Where a way has once become dedicated, the rights of the public cannot in future be restricted, except by statute, but they can be enlarged by further dedication, express or implied (*i*), except that no inference of extended dedication will be drawn where the extended user has been, from its beginning, a public nuisance and inconsistent with the safe exercise of the right originally granted (*j*).

Since there is no obligation on an owner of land to dedicate the use of it as a highway to the public, and equally it is not compulsory on the public to accept the use of a way when offered to them, both parties will be held to the terms on which the use of the soil as a way was granted (*h*). If a way is dedicated to the public full of ruts and holes, the public must take it as it is, and cannot complain that the owner has dedicated to them an unsatisfactory or dangerous highway (*l*): nor can they complain if he imposes restrictions; if they accept his land as a highway, they must use it for such purposes and subject to such restrictions as he has indicated or imposed (*m*). But if the highway is once dedicated and accepted unconditionally, or subject to certain defined restrictions, the owner cannot at a later date impose additional restrictions (*n*). In addition to any restrictions imposed by the owner of the soil on dedication, any rights in the soil acquired by other persons

(*g*) *Daves v. Hawkins* (1860), 8 C. B. (N. S.) 848; 26 Digest 295, 270, and see title HIGHWAYS, EXTINCTION OF.

(*h*) In *R. v. Mathias* (1861), 2 F. & F. 570; 26 Digest 448, 1641, the use of a public footway by a foot passenger pushing a perambulator was held to be lawful, that being a usual accompaniment of foot passengers who are mothers of infants, though unknown at the time of the dedication of the way. The same principle has been applied to a steamboat on a canal (*Case v. Midland Rail. Co.* (1859), 27 Beav. 247; 38 Digest 407, 981).

(*i*) It may be properly found as a fact from evidence of subsequent user that a way originally set out or dedicated as a private carriageway and public footway, of no prescribed width, has since become a public carriageway (*Grand Surrey Canal Co. v. Hall* (1840), 1 Man. & Gr. 392; 26 Digest 287, 203); but where a way was set out under an award as "a public footpath 15 feet wide" and a private carriageway, it was held that the rights of the foot passengers extended to the whole 15 feet (*Pullin v. Deffel* (1891), 64 L. T. 134; 26 Digest 315, 477). It is doubtful if in such a case there could be any dedication as a public carriageway (*Sheringham U.D.C. v. Holsey* (1904), 68 J. P. 395; 26 Digest 306, 374).

(*j*) *Sheringham U.D.C. v. Holsey*, *supra*, where it was held of a narrow footpath set out as such under an inclosure award that its past use by wheeled traffic had been a nuisance and could not justify an inference of dedication as a public carriageway.

(*k*) *Fisher v. Prowse* (1862), 2 B. & S. 770; 26 Digest 265, 66.

(*l*) *Gautret v. Egerton* (1867), L. R. 2 C. P. 371; 7 Digest 289, 168; *Brackley v. Midland Rail. Co.* (1916), 85 L. J. (K. B.) 1596; 26 Digest 302, 333.

(*m*) See cases cited in notes (*k*) and (*l*), *supra*.

(*n*) *Arnold v. Blaker* (1871), L. R. 6 Q. B. 433; 26 Digest 417, 1359; *Harrison v. Danby* (1870), 34 J. P. 759; 26 Digest 417, 1353.

continue in the highway, and the dedication is subject to them, even if the rights constitute what would otherwise be a nuisance (o). [946]

Width of Highway.—Apart from special enactments, a highway may be of any width; and the extent of the land subject to the public right of highway is a question of fact. But in general, and in the absence of anything to the contrary, it extends to the whole width of the road between the fences, including the strip of land at the side as well as the *via trita*, or metalled part of the road. In *R. v. United Kingdom Electric Telegraph Co.* (p), BARON MARTIN said, “In the case of an ordinary highway, although it may be of a varying and unequal width, running between fences, one on each side, the right of passage or way, *primâ facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public are entitled to the use of the entire of it as a highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriage and foot passengers.” And in *Neeld v. Hendon U.D.C.* (q), VAUGHAN WILLIAMS, L.J., said, “The presumption is that *primâ facie*, if there be nothing to the contrary, the public right of way extends over the whole space of ground between the fences on either side of the road; that is to say, that the fences may, *primâ facie*, be taken to have been originally put up for the purpose of separating land dedicated as a highway from land not so dedicated.”

The question, which is purely one of fact, therefore very largely depends on whether or not there are any physical signs from which the extent of the public right of passage can be calculated. A private right of way over waste land, or a line between two points, is not necessarily a right over every part of the land, and the owner of the soil is entitled to enclose it on either side provided that he leaves a convenient way (r). A former notion that owners of land at the side of a highway might encroach or enclose up to fifteen feet from the centre, was declared to be an error (s), and the question was said to be always as to the extent of the highway by user; but in *A.-G. v. Esher Linoleum Co., Ltd.* (t), BUCKLEY, J., disagreed with the idea that it was user which indicated the space of soil over which the public had the right of passage, and said, “In all these cases of right of way, it is necessary to remember that the thing to be established is dedication, not user. A highway is not acquired by user. You cannot acquire a right of public way under the Prescription Acts. If you want to acquire a right by prescription you must go back to the time of Richard I., to a time before legal memory. In most of those cases dedication, it is true, is proved by user. But user is but the evidence to prove dedication; it is not user but dedication which constitutes the highway.” In that case it was held that where there was a public footpath, and adjacent land along the same line as the footway, increasing its width, was laid out by the

(o) *Robbins v. Jones* (1863), 15 C. B. (N. S.) 221; 26 Digest 442, 1590 (cellar under road); *Cornwell v. Metropolitan Commissioners of Sewers* (1855), 10 Ex. 771; 7 Digest 283, 140 (unfenced sewer adjoining highway); *Warner v. Wandsworth District Board of Works* (1889), 53 J. P. 471; 26 Digest 444, 1616 (dangerous bridge); *Owen v. De Winton* (1894), 58 J. P. 833; 7 Digest 287, 161 (unfenced extension).

(p) (1862), 3 F. & F. 73; 26 Digest 313, 452.

(q) (1899), 81 L. T. 405; 26 Digest 314, 461.

(r) *Hutton v. Hamboro* (1860), 2 F. & F. 218; 26 Digest 312, 442.

(s) *R. v. Johnson* (1859), 1 F. & F. 657; 26 Digest 313, 447.

(t) [1901] 2 Ch. 647; 26 Digest 281, 178.

owner of the soil as a carriageway, even for private carriage traffic, the presumption of law was that the owner had dedicated to public use as a footway all the space which he had in fact devoted to traffic. [947]

Fences, though not conclusive evidence, are taken *prima facie* as the boundaries of the highway, in order to raise the presumption previously mentioned. But the mere existence of fences on either side of a highway is not conclusive, and in order to raise the presumption it must be proved that there is nothing to show that they were not put up as boundaries of the highway (*u*). The right in general extends over everything between the fences including a footpath by the roadside (*a*), adjacent strips of land (*b*), and in some instances ditches (*c*), and where there is a fence on one side only there is a presumption that the space between the metalled portion and that fence is dedicated (*c*). If, however, there is no fence on either side, and the adjoining land has never been dedicated to the public, there is no public right of passage over anything but the metalled portion (*d*). In *Nicol v. Beaumont* the owner of a building estate granted to the purchaser of one of the lots the right for himself, his heirs and assigns, and other persons to pass over the several roads made through the estate in the same manner and as fully as if the roads were public roads. Two of the roads were forty feet in width, of which twenty feet in the middle was gravelled for carriage traffic, leaving a strip of grass ten feet wide on either side. An assignee of the original purchaser and other residents were accustomed to walk along these grass strips to and from their homes. The owner of the estate caused the grass strips to be intersected by ditches for the purpose, as he alleged, of draining the road, but really, as the court held on the evidence, of preventing persons from walking over the strips. It was held that the assignee of the original purchaser was entitled to use the whole road, and not merely the metalled part, and that the building owner had no right to make ditches which were dangerous to persons using the road, and an injunction was granted (*e*). The same principle has been applied to a highway used as a towing path (*f*).

In *Turner v. Ringwood Highway Board* (*g*) where a public road had been laid out under an inclosure award of a width of fifty feet, but only twenty-five feet in the centre had become a *via trita* by usage, the residue being overgrown with furze, heath and fir trees, it was held that the right of the public was to have the whole width of the road kept free from obstructions. In *R. v. Wright* (*h*) where a road had been described in an inclosure award as a private road twenty-four feet wide but had actually been laid out sixty feet in width, though the centre only had been used as a *via trita*, it was held to be a question of fact for the jury whether the road, though originally intended to be a private road, had not been dedicated to and adopted by the public, and whether, in

(*u*) *Offin v. Rochford R.D.C.*, [1906] 1 Ch. 342; 26 Digest 313, 455.

(*a*) *Loveridge v. Hodson* (1831), 2 B. & Ad. 602; 26 Digest 313, 451.

(*b*) *Nicol v. Beaumont* (1883), 53 L. J. (Ch.) 853; 26 Digest 312, 443, but see *infra*.

(*c*) *Evelyn v. Mirrieles* (1900), 17 T. L. R. 152; 26 Digest 315, 470.

(*d*) *Easton v. Richmond Highway Board* (1871), L. R. 7 Q. B. 69; 26 Digest 485, 1536.

(*e*) *Nicol v. Beaumont*, *supra*.

(*f*) *Thames Conservators v. Dennis*, *Times*, November 1, 1902; 26 Digest 313, 446.

(*g*) (1870), L. R. 9 Eq. 418; 26 Digest 315, 476.

(*h*) (1832), 3 B. & Ad. 681; 26 Digest 283, 186.

that event, the dedication had not extended to the whole width. In *Rowley v. Tottenham U.D.C.* (i) the plan of a building estate showed a proposed road bounded on the north by the boundary fence of a park belonging to the district council with footpaths on either side of it, the total width being forty feet. Houses were built on the south side, and the road on that side made up and metalled, but only to the centre, and the northern half was left untouched. The road connected two thoroughfares, and for three years was used uninterruptedly as a thoroughfare from one to the other, the metalled part being used in preference to the unmetalled part. It was held on these facts that the whole width had been dedicated to the public as a highway. [948]

Where the highway runs between fences, but the space between them is of a varying or unequal width, the right of passage or way, *primâ facie*, extends as before to the whole of the land between the fences, which is all presumably dedicated unless the nature of the ground or other circumstances rebut that presumption; the public are not confined to the metalled part, and the owner of the adjoining land may not enclose any portion of it which has presumably been dedicated (k). But where such a highway is crooked and of varying width, and there is a dispute between the highway authority and the adjoining owner as to its boundaries, the parties can lawfully agree to a straight give-and-take line making the highway of uniform width (l).

In *Harvey v. Truro R.D.C.* (m), a strip of land of 150 yards in length lay on one side of the roadway, gradually narrowing at each end from 22 feet at its broadest part, and the entire space between the ancient fences, including both the metalled road and the strip, varied from 40 to 33 feet. The highway authority had, as far back as living memory extended, used a portion of the strip for the deposit of material for the repair of the roads. There was some evidence that a portion of the strip was at one time thrown into the road without objection by the owner. It was held that the strip formed part of the highway, although the owner had been in possession for the past eighteen years. In *Locke-King v. Woking U.D.C.* (n), a local Act had empowered a cemetery company to purchase from the lord of the manor and sell strips of land adjacent to a highway (the strips of land being described in the schedule to the Act as waste land), but it was held that the Act was not sufficient to rebut the presumption that the strips were part of the highway. In *Evelyn v. Mirrielees* (o), the Court of Appeal held that where there was waste land adjoining a highway and open to it on that side, while on the other side was a fence with a narrow strip of grass land below, the lord of the manor must be presumed to have dedicated the land up to the fence as part of the highway. Where there was a triangular piece of land on practically the same level as the highway, of about 1,600 square yards in extent, the distance from the metalled part of the highway to the apex of the triangle being about 90 feet, it was held that the presumption of dedication was not rebutted by the owner of the adjoining land showing that his tenant had, with

(i) [1914] A. C. 95; 26 Digest 308, 407.

(k) *Harvey v. Truro R.D.C.*, [1903] 2 Ch. 638; 26 Digest 313, 454.

(l) *Portsmouth Corp'n. v. Hall* (1907), 71 J. P. 299, reversed on another point, see *ibid.*, 564; 26 Digest 271, 106; and see *R. v. Burrell* (1867), 10 Cox, C. C. 462; 26 Digest 441, 1575.

(m) [1903] 2 Ch. 638; 26 Digest 313, 454.

(n) (1897), 62 J. P. 167; 26 Digest 314, 459.

(o) (1900), 17 T. L. R. 152; 26 Digest 315, 470.

considerable regularity, placed on the land a heap of manure, grazed it with sheep and cattle, and used it as a means of passage to the adjoining land, such acts not being inconsistent with the public right of user (*p*). Where a tramway had been constructed under an Act of Parliament on a strip of land adjoining a highway, and had been used regularly for fifty years, and for some years the tramway track had been used without remonstrance by members of the public for all highway purposes, except that of driving carts and vehicles, no distinction being made in user between the tramway track and the grass margin lying by the side of the metalled road; following the discontinuance of the tramway, portions were used for the storage of road metal without protest, and it was held that the strip had been dedicated as part of the highway notwithstanding various acts of ownership exercised after the discontinuance of the tramway (*q*). [949]

Not merely is it clear that the public have the right to use, in the absence of evidence to the contrary, the whole width of a carriageway between the hedges, but it is also clear that a foot-passenger may exercise his rights over the whole or any part of the carriageway. In *Boss v. Litton* (*r*), it was held that a foot-passenger, though he might be infirm from disease, had a right to walk in the carriageway, and was entitled to receive reasonable care at the hands of persons driving carriages along it. In *Pullin v. Deffel* (*s*), where a public bridle road and footway fifteen feet in width had been set out under an inclosure award which provided that it should also be used as a private carriage and drift way by the owners of certain adjoining allotments, and the owners of the allotments had barred 11½ feet in width of the way in order to preserve their exclusive right to the use of the way as a carriage- and drift way, it was held in an action against the surveyor of highways for removing the barrier, that the public had a right to use the whole length and breadth of the way as a bridleway and footway. [950]

Rebuttal of Presumption of Dedication.—But the presumption does not arise in every case, and may always be rebutted by evidence. It does not arise at all if the existence of the fence is not in some way referable to the existence of the highway (*t*). In *Neeld v. Hendon U.D.C.* (*u*), the presumption was rebutted in the case of an irregularly shaped piece of land, formerly part of the waste of a manor, lying between a metalled public highway and an ancient fence enclosing private property, in respect of which land a series of acts of ownership by the lord of the manor, including digging soil, enclosing land, fencing and restoring the fence, and enfranchising land to which a copyholder had been admitted, were proved. In *Friern Barnet U.D.C. v. Richardson* (*a*) it was rebutted in the case of certain greens alongside a highway, by evidence that these greens had been entered in the court rolls of a manor as waste belonging to the manor, and had subsequently been dealt with as private property. In *Belmore (Countess) v. Kent County Council* (*b*), it was rebutted by proof that as far back as living

(*p*) *Offin v. Rockford R.D.C.*, [1906] 1 Ch. 342; 26 Digest 313, 455.

(*q*) *Coats v. Herefordshire County Council*, [1909] 2 Ch. 579; 26 Digest 291, 230.

(*r*) (1832), 5 C. & P. 407; 26 Digest 316, 431.

(*s*) (1891), 64 L. T. 134; 26 Digest 315, 477.

(*t*) *Offin v. Rockford R.D.C.*, *supra*; *A.-G. and Croydon R.D.C. v. Moorsom-Roberts* (1908), 72 J. P. 123; 26 Digest 315, 468.

(*u*) (1899), 81 L. T. 405; 26 Digest 314, 461.

(*a*) (1898), 62 J. P. 547; 26 Digest 314, 460.

(*b*) [1901] 1 Ch. 873; 26 Digest 314, 466.

memory went the owners of a strip of land adjoining a highway, or their predecessors in title, had used and enjoyed the strip in such a manner and to such an extent as the nature of the strip permitted, and had exercised acts of ownership over it such as grazing cattle, placing hurdles to protect cattle, raising the level of a private road across it, and ordering off gypsies, while there was no evidence of any act done by the highway authority on the strip in the same period. In *Plumbley v. Lock* (c), the presumption was rebutted by the production of two ancient maps showing the length of road in question as part of the open waste, and a subsequent deed showing a grant by the Crown to private individuals of portions of the uninclosed waste near the road, and proof that the grass and herbage were closely cropped throughout the length of the road, which communicated at either end with open commons from which it was shut off by gates.

Where there is evidence of both public user, and of the exercise of private rights, the presumption of dedication will in general prevail. In *East v. Berkshire County Council* (d), a highway ran through the lands of a manor for a mile and a half. On its north side was a strip of land varying in width from twelve feet to thirty-three feet, separated from the main land of the manor by an ancient fence. At one point cottages had been built facing the strip, and the cottagers had used the strip for the purpose of reaching the road. For forty years the public had used the strip as part of the highway, and had worn a footpath along it. On the other hand the lord of the manor had for fifty years exercised various acts of ownership in connection with the strip. It was held that the acts of ownership were not sufficient to rebut the presumption that the highway extended to the fence on the north side (e).

Where the fence was not put up with reference to the highway at all, but was originally the fence of a close through which the highway was later constructed, the presumption obviously does not exist (f).

Where a fence bordering a highway has on the roadway side of it a ditch, such as is usually made by an owner on the margin of his property (g), there is probably a presumption that the ditch itself does not form part of the highway (h). This applies *a fortiori* when the road has been set out in an award as being of a certain width, and is of that width excluding the ditches (i). But a ditch filled in and piped by the council with the owner's consent may or may not subsequently be dedicated by the owner (j). There is no rule of law which prevents a ditch, or land in a condition at present impassable for traffic, being dedicated as part of a highway; and therefore where a wide drain, proved to be necessary for the existence of the road, runs between a metalled road and a fence, a jury may properly find that the site of the drain has in fact been dedicated as part of the highway (k). [951]

As regards open spaces other than roadside strips, mere user by the public is not sufficient evidence of an intention by the owner to dedicate

(c) (1902), 67 J. P. 237; 26 Digest 430, 1495.

(d) (1911), 106 L. T. 65; 26 Digest 314, 456.

(e) See also *Offin v. Rochford R.D.C.*, ante, p. 416.

(f) *A.-G. and Croydon R.D.C. v. Moorsom-Roberts* (1908), 72 J. P. 123; 26 Digest 315, 468.

(g) *Doe d. Pring v. Pearsey* (1827), 7 B. & C. 304; 26 Digest 323, 566.

(h) *Field v. Thorne* (1869), 20 L. T. 563; 7 Digest 279, 110; *Chippendale v. Pontefract R.D.C.* (1907), 71 J. P. 231; 26 Digest 315, 471.

(i) *Simcoz v. Yardley R.D.C.* (1905), 69 J. P. 66; 26 Digest 315, 473.

(j) *Walmsley v. Featherstone U.D.C.* (1909), 73 J. P. 322; 26 Digest 310, 430.

(k) *Chorley Corp'n. v. Nightingale*, [1907] 2 K. B. 637; 26 Digest 315, 472.

the whole surface of the open space to the public. The mere fact that the public have for more than thirty years used an open space in a town, surrounded on all sides by highways, by passing over it in all directions, is not conclusive evidence of an intention on the part of the owner of the soil to dedicate such space as a highway (l). A space in front of an inn, not separated from the highway except by a channel, and used as a "draw-up" for carts, may be private property not subject to any public rights (m). But in *St. Ives Corporation v. Wadsworth* (n), a triangular piece of ground, on one side bordering a river and contiguous to a bridge, and on another formerly open to an ancient highway leading to the bridge, was fenced in 1871 by the then highway authority to prevent nuisance, the fence extending from the bridge to the wall of a house which formed the third side. The person who since 1890 had owned the house treated the ground as his own, and the highway authority brought an action to establish their right to remove the fence at will. It was held that the ground was a public highway between the land and the river, and was also part of the highway to the bridge, and that the erection of the fence did not prevent this; but since it was suggested by SWINFEN EADY, J., that the true view was that the land was part of a very ancient highway, and the principle once a highway always a highway was applied, this case possibly does not really depart from those previously cited. Where a public footpath of no prescribed width runs through an irregularly shaped piece of land of varying width used as an occupation cart-road, the fact that at one spot the public are restricted to a hand-gate, the private cart-gate being kept locked, may show that although the public in passing through the lane have been accustomed to walk over every part of it, there is no presumption that the public right extends to the whole of the land between the fences (o). [952]

Right to Deviate.—Where a highway runs over open, uninclosed land, the public may have a right to deviate on to the adjoining land when the usual track is foundrous and impassable. It is uncertain whether this right exists as a matter of law, independently of user, or not, and it seems probable that it only does exist where the public have in fact so deviated from time immemorial. If in fact the adjoining land on both sides of the highway was previously uninclosed, and the public have in fact so exercised a right of deviation when the way became foundrous or impassable, then if the owner chooses to inclose, thus depriving them of the right of deviation, he becomes legally liable *ratione clausuræ* to keep the highway in repair while his inclosure lasts (p). There is also authority to the effect that if he does not do so, the public in their turn may deviate notwithstanding the fences (q).

In *Duncomb's Case* (r), which is usually spoken of as the leading

(l) *Robinson v. Cowpen Local Board* (1893), 63 L. J. (Q. B.) 235; 26 Digest 300, 309.

(m) *Hoare & Co., Ltd. v. Lewisham Corpn.* (1901), 85 L. T. 281; affirmed (1902), 87 L. T. 464; 26 Digest 310, 429.

(n) (1908), 72 J. P. 73; 26 Digest 261, 14.

(o) *Ford v. Harrow U.D.C.* (1903), 67 J. P. 248; 26 Digest 315, 469.

(p) *Duncomb's Case* (1634), Cro. Car. 366; 26 Digest 372, 972.

(q) *Henn's Case* (1633), W. Jo. 296; 26 Digest 318, 507; *Stacey v. Sherrin* (1913), 29 T. L. R. 555; 19 Digest 117, 776, in which case it was held that if the owner of land adjoining a highway wrongfully obstructs the highway, he cannot recover damages for trespass if the public deviate on to his land in order to circumvent the obstruction.

(r) *Supra*.

case on this question, it appeared that when an ancient highway was out of repair, the public had been accustomed immemorially to deviate on certain outlets. The adjoining owner inclosed the outlets, leaving a road four yards wide, and making a causeway reasonably good for horsemen but too narrow for carts or coaches to use, and it was held that, since the defendant had deprived the public of the ground over which they had been used to deviate, he was bound to repair the highway and make it a good way. [953]

In *Henn's Case* (s), it was held that if a man incloses where he is entitled to do so by law, he is bound to leave a good way and also to keep it in continual repair at his own charge, but in view of later decisions, this must be taken as limited to inclosures which deprive the public of a former right of deviation. The same position arises where the owner obstructs the way (t). There are *dicta* in a number of other cases where the point was not directly in issue (u), but in *Arnold v. Holbrook* (a) it was held that in cases of limited dedication no right of deviation would be presumed to exist apart from prescription, and in *R. v. Oldreeve* (b) that no such right accrued where the obstruction to the road was caused by the action of the elements. In the first of these two cases the public had a right to use a footpath across the field of A., but subject to the right of A. to plough it up when he ploughed the rest of the field. He did so plough it up, and did not set out or mark the line of the path, but left the public to tread out the line. Persons continued to walk across the field in the direction which the path had taken, but, finding the path in a muddy and bad condition, turned out of it and walked on either side. To prevent this, A. placed hurdles on the parts in question, leaving a space of six feet in width where the path had been. A person having thrown down the hurdles, A. brought an action against him, and it was held that the respondent could not claim a right to go off the line of the footpath or a right to pull down the hurdles; the right to deviate might be annexed by prescriptive enjoyment to a highway, but it could not be presumed to exist as an incident to a limited dedication.

In *R. v. Oldreeve* (b), it was held that there is a difference between an owner putting an obstruction in a public way across his field, and the same obstruction of a private way. If there is a public way and he puts an obstruction upon it, the public, besides being entitled to indict him and take down the obstruction, also have a right, if they cannot pass without doing so, to go round a reasonable distance into a field of the owner adjoining the way, and use that as a temporary way until he removes the obstruction. But if the obstruction is caused by the action of the elements, then no such right accrues to the public, who are obliged to remain without the way across that place until they repair it for themselves. Accordingly it was held that where a highway to a cove on the seashore was annihilated by the fall of a cliff, the public had no right to deviate. In an unnamed case reported by Lord

(s) See note (g), *ante*, p. 418.

(t) *Absor v. French* (1678), 2 Show. 28; 26 Digest 319, 510; and see *Stacey v. Sherrin* (1913), 29 T. L. R. 555; 19 Digest 117, 776.

(u) *R. v. Fleckenow (Inhabitants)* (1758), 1 Burr. 461; 26 Digest 372, 974; *Taylor v. Whitehead* (1781), 2 Doug. (K. B.) 745; 19 Digest 116, 765; *Bullard v. Harrison* (1815), 4 M. & S. 387; 43 Digest 416, 394; *Dawes v. Hawkins* (1860), 8 C. B. (N. S.) 848; 26 Digest 295, 270; *Steel v. Prickett* (1819), 2 Stark. 463; 26 Digest 319, 513; *Eyre v. New Forest Highway Board* (1892), 56 J. P. 517; 26 Digest 260, 5.

(a) (1873), L. R. 8 Q. B. 96; 26 Digest 319, 515.

(b) (1868), 32 J. P. Jo. 271; 26 Digest 319, 509.

RAYMOND (c), it is stated to have been held by Lord HOLT, C.J., that when a river is choked by mud, users may deviate on to the adjoining land, no matter to whom it belongs; but this view is characterised as being altogether too wide in a later case (d). It appears, therefore, that unless there is an immemorial right to do so, the public cannot deviate except on to the adjoining land of the actual person obstructing. [954]

2. RIGHTS OF OWNERS AND OCCUPIERS OF LAND ADJOINING A HIGHWAY

Nature of Right of Access.—The owner of land adjoining a highway has a right of access to the highway from any part of his land adjoining the way (e). This is a private right, distinct from the right to use the way as one of the public (f). In the case of *St. Mary, Newington, Vestry v. Jacobs* (g), MELLOR, J., said, "The owner, who dedicates to public use as a highway a portion of his land, parts with no other right than a right of passage to the public over the land so dedicated, and may exercise all other acts of ownership not inconsistent therewith; and the appropriation, made to and adopted by the public, of a part of the street to one kind of passage, and another part to another, does not deprive him of any rights as owner of land, which are not inconsistent with the right of passage by the public." And in *A.-G. v. Thames Conservators* (h), PAGE WOOD, V.-C., said that it would be the height of absurdity to say that a private right is not interfered with when a man who has been accustomed to enter his house from a highway, finds his doorway made impassable so that he no longer had access to his house from the highway, and that this would be equally a private injury to him whether the right of the public to pass and repass along the highway were or were not at the same time interfered with.

The right of access is at every point at which the land of the adjoining owner actually touches the highway. In *Berridge v. Ward* (i), it was said that in the case of a public highway the owner would be entitled to free access to it from any part of his land, and the same was held by BLACKBURN, J., in *Marshall v. Ulleswater Steam Navigation Co.* (k). This applies even though the property is divided from the street by a wall, provided that the wall is one which the owner may himself remove if he thinks fit (l), but not if the street has not been dedicated (m), and not if there is any intervening strip of land, however narrow, over which the public have not the right to walk (n). But to have the right it is not necessary to own the soil of the adjoining highway *usque ad medium filum viae* and the rights are the same where the soil of the

(c) *Young v. ———* (1698), 1 Ld. Raym. 725; 44 Digest 109, 877.

(d) *Ball v. Herbert* (1789), 3 Term Rep. 253; by Lord KENYON, C.J. and BULLER, J.

(e) *Marshall v. Ulleswater Steam Navigation Co.* (1871), L. R. 7 Q. B. 166; 26 Digest 332, 637.

(f) *Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 662; 26 Digest 332, 634.

(g) (1871), L. R. 7 Q. B. 47; 26 Digest 325, 587.

(h) (1862), 1 Hem. & M. 1; 26 Digest 333, 648.

(i) (1860), 2 F. & F. 208; 26 Digest 332, 636.

(k) *Supra.*

(l) *Manchester Corpn. v. Chapman* (1868), 37 L. J. (M. C.) 173; 26 Digest 332, 633.

(m) *Woodyer v. Hadden* (1813), 5 Taunt. 125; 26 Digest 332, 632.

(n) *Lighbound v. Higher Bebington Local Board* (1885), 16 Q. B. D. 577; 26 Digest 522, 2227.

highway is vested in another (o). They also continue to subsist where one highway is substituted for another (p). [955]

The question whether this right of access extends across a footway naturally depends on whether or not the footway is part of the highway. In the ordinary way the highway extends from hedge to hedge (see *ante*), and the mere fact that part of it is set out for foot passengers cannot disentitle the adjoining owners from their right at reasonable times and to a reasonable extent to cross the footpath, which is a very different matter from driving along the footpath (q). The appropriation made to and adopted by the public, of a part of the street to one kind of passage and another part to another, does not deprive the owner at common law of any rights as owner of the land which are not inconsistent with the right of passage by the public (r). In the case referred to, a summons against an adjoining owner for damaging a highway by conveying machinery into his adjoining premises and thereby crushing some of the flags of the footway, had been dismissed on the grounds that the freehold premises of the owner could not be reasonably enjoyed without access across the existing footway, and that the rights of ownership and those of the public might be jointly exercised consistently with the general welfare. The Court of Queen's Bench held that such dismissal was justified. In that case the road was treated, though actually incorrectly, as being the property of the adjoining owner, and the question later arose as to what was the position when the footway was the property of the local authority. In view of the dicta of Lord SELBORNE, L.C., in *Lyon v. Fishmongers' Co.* (a), and the decisions in *Ramuz v. Southend Local Board* (b) and *Rowley v. Tottenham U.D.C.* (b), it appears clear that it is not necessary that the owner should own the soil, and that he may cross the footway provided that it is part of the highway; but if it is not, and there is a strip, however narrow, intervening which is not a part of the highway, then he has no right of access across this because he does not abut.

It was stated in *Rowley v. Tottenham U.D.C.* (b) that this right of crossing the footway must be exercised at reasonable times and to a reasonable extent. In the case of *Curtis v. Geeves* (c), the question arose as to the effect upon the right of access of sect. 35 of the City of London Police Act, 1839 (d), which imposed a penalty on persons drawing or driving a cart or carriage so that it stood across or upon any footway. An employee of a bank whose premises adjoined a street to which the section applied drove a motor car into a courtyard across the footway in a manner authorised by the bank, there being no other means of access but no constructed crossing. There was no evidence as to to whom the footway belonged, or that the courtyard had previously been used for vehicular traffic, but there were no pedestrians about at the time, and no right of passage by the public was interfered with. It was held that since access to the courtyard by vehicles was not shown to be essential to any user of the premises, the driver could be convicted under the section. The ground of the decision appears to be that where

(o) *Ramuz v. Southend Local Board* (1892), 67 L. T. 169; 26 Digest 333, 639.

(p) *Yorkshire (East Riding) County Council v. Selby Bridge Proprietors*, [1925] Ch. 841; 26 Digest 571, 2630.

(q) *Rowley v. Tottenham U.D.C.*, per Lord COZENS HARDY, M.R., in [1912] 2 Ch. at p. 644, affirmed, [1914] A. C. 95; 26 Digest 308, 407.

(r) *St. Mary, Newington, Vestry v. Jacobs* (1871), L. R. 7 Q. B. 47; 26 Digest 325, 537.

(a) (1876), 1 App. Cas. 662, at p. 684; 26 Digest 332, 634.

(b) *Supra*.

(c) (1930), 94 J. P. 71; Digest (Supp.).

(d) 2 & 3 Vict. c. xciv.

a statutory prohibition is imposed in the interests of public safety, the owners of adjoining premises must exercise their rights in a manner consistent with the enactment, and if an adjoining owner requires means of access to his premises across a footway, he is entitled, if necessary, to have a crossing constructed; but that where driving across the footway has been prohibited in the interests of public safety, an owner cannot drive over it promiscuously to any part of his premises in exercise of his general right of access to every point. The decision, therefore, does not appear to vary the previously existing law that the right must be exercised at reasonable times and to a reasonable extent, and that what is reasonable may be prescribed by statute. [956]

Public Health Provision.—A further statutory restriction on this right is imposed by sect. 18 of the P.H.A. Amendment Act, 1907 (*e*), under which the provision and use of new means of access for cattle, waggons, carts or other wheeled carriages exceeding four feet in width or two cwt. in weight to or from premises fronting, adjoining or abutting on a street which has become a highway publicly repairable, may, where it will involve passage across or interference with any kerbed or paved footway, forming part of the street, be allowed by the council, subject to the conditions (i.) that written notice and a plan showing the position, gradient, and mode of construction of the intended means of access are given to the council; (ii.) that the necessary works are executed under the supervision and to the reasonable satisfaction of the council and in accordance with the plan as approved by them; (iii.) that after completion of the works, the new means of access may be used subject to the conditions which, under the general law of highways, attach to the similar use of a carriageway which forms part of a highway publicly repairable. The exact meaning and effect of this enactment are not clear. The section has been applied to rural districts with the substitution of the county council for the district council (*f*), but in rural districts where road functions have been delegated by the county council the powers will be exercised by the R.D.C. (*g*). In a borough or urban district sect. 18 may be put in force by an order of the M. of H. (*h*), but where such an order has not been made, the section none the less applies to county roads (*i*), and the powers may also be exercised by the borough council or the U.D.C. in respect of delegated roads but not otherwise (*k*). If conditions are imposed by a council to which the frontager objects as unreasonable, he may appeal to quarter sessions (*l*). [957]

The extent to which sect. 18 of the Act of 1907 limits the common law right of access has never been the subject of examination by the courts, but in two cases very similar enactments in a local Act have been considered. In *Rowley v. Tottenham U.D.C.* (*m*), the section of the local Act comprised provisions similar to those of sect. 18 but providing a penalty for driving a vehicle across a footway until a communication in accordance with the section had been provided, and Lord COZENS HARDY, M.R., said that the section seemed to recognize and at the same time to regulate the right to cross a kerbed footpath. In *Marshall*

(*e*) 13 Statutes 917.

(*f*) See L.G.A., 1929, s. 30 (2) and Sched. I., Part I.; 10 Statutes 904, 975.

(*g*) *Ibid.*, ss. 35, 36 (2); 10 Statutes 910, 911.

(*h*) P.H.A. Amendment Act, 1907, s. 3 (1); 13 Statutes 911.

(*i*) *Ibid.*, s. 31 (5) and Sched. I., Part III.; 10 Statutes 906, 977.

(*k*) See note (*g*), *ante*.

(*l*) P.H.A. Amendment Act, 1907, s. 7; 13 Statutes 913.

(*m*) See *ante*, pp. 415, 421.

v. *Blackpool Corporation* (n), the local Act again contained the combined provision, and the owners of land adjoining, bounded by a wall and abutting upon a street which was partly footpath and partly carriageway, wished to open a passage for motor coaches into their premises across the footway. They submitted a plan, to which no objection was taken so far as the works proposed were concerned, but the council refused to sanction the plan on grounds of possible injury to the safety of the public and the convenience of pedestrians and vehicular traffic when using the highway. An indication of the difficulties of the case is obtained from the fact that the decision was varied in three of the four courts through which the case passed. The owners appealed to quarter sessions against the refusal of the council to approve their plans as unreasonable, and the appeal was allowed. On a case stated, the Divisional Court held that this was right, and that since the common law right of immediate access to the highway was not in unequivocal words taken away, and as the requirements of the section as to a plan and otherwise had been duly complied with, the council had no power to refuse their sanction. On appeal, this decision was reversed by a majority, SCRUTTON and SLESSER, L.JJ., holding that on an application under the section to form a communication for horses and vehicles across a footpath to the premises of an adjoining owner, the council were not limited to considering the matters specified in the section—the situation and details of the work—but were entitled to consider the nature of the proposed user, the safety of the public, and the convenience of pedestrians and vehicular traffic. On the other hand the council were not entitled to have regard to possible powers under a Town Planning Scheme, and might not use the safety of the public as a reason for prohibiting all ingress and egress; they could not deprive the owner of all access to or from his premises, but might consider the nature of the user and the safety of the public in determining what access was to be allowed. EVE, J., dissented, and the decision of the Court of Appeal was again reversed by the House of Lords in a joint judgment delivered by Lord ATKIN, who adopted the law laid down by the Divisional Court. The resulting decision appears to be most clearly stated in the dissenting judgment of EVE, J., in the Court of Appeal: “(The section) does not expressly or by implication abrogate or limit the absolute right of the owner to gain access to the highway at any point he may select. I construe it as imposing on the owner who is desirous of exercising this right at a point which involves the crossing of a footpath an obligation to satisfy the corporation, by the details enumerated in the section, that the proposed crossing or communication is one which will not interfere with the reasonable exercise by the public of their rights of way, that is to say, with those public rights to which the owner’s right of access is already admittedly subject. In other words, the operation of the section, as was well said in the course of the argument on the part of the owners, is to regulate the exercise of the right in particular circumstances (that is to say the existence of an intervening pathway) but not to limit or restrict it” (o). Such matters as the construction of the crossing being strong enough to carry the weight of the vehicles without crushing subjacent pipes, and the steepness of the gradient into the road may legitimately be taken into account.

It is difficult to reconcile the decision in *Marshall’s Case* with that in *Curtis v. Geeves* (p), in fact SCRUTTON, L.J., said that it was impos-

(n) [1933] 1 K. B. 688; [1933] 2 K. B. 329, C. A.; [1935] A. C. 16; Digest (Supp.).

(o) [1933] 2 K. B. at p. 355.

(p) See ante, p. 421.

sible, but it may be that their joint effect is that where there is a prohibition against driving over footpaths, an adjoining owner may not do so promiscuously even to obtain access to his premises in exercise of his common law right; but that if he submits to the council satisfactory particulars of a proposed crossing, they must authorise it. [958]

Rights as Member of the Public.—The adjoining owner's right of access from his premises to the highway is a private right and is distinct from his right to use the highway as soon as he is upon it, which he enjoys as a member of the public. But his right to transfer goods from vans in the public roadway across the public pavement to his premises is a right enjoyed by him as one of the public entitled to use the highway. It is an individual interest in a public right, but is not a private right which entitles him to restrain a local authority, acting *bona fide* under statutory powers, from obstructing the highway adjoining his premises in a manner which affects his personal convenience. Where, therefore, a metropolitan borough council in the exercise of their statutory obligation to light streets, erected a lamp post on a highway at a place where it was shown to be most convenient to the public, the owners of premises abutting on the highway were held to have no right to restrain the authority from exercising their statutory authority to obstruct the highway by the erection of lamp posts where necessary (*q*). Where the highway has not been dedicated subject to the exercise of the private right, then, if it is shown that the private right, however reasonably it is used, causes a serious obstruction to the public, it must yield to the public right (*r*). Further, in the case of buildings of a certain character erected from plans submitted after August 2, 1935, the local authority may, under sect. 17 of the Restriction of Ribbon Development Act, 1935, require as a condition of their approval the provision of accommodation for loading and unloading vehicles (see title RIBBON DEVELOPMENT RESTRICTION). [959]

Right to Compensation.—Otherwise, interference with the private right of an owner will, if wrongful, support an action (*s*) and amount to injurious affection of his premises for compensation purposes (*t*). Where a plaintiff occupied a cottage and a small piece of land on a level with and abutting on a public highway, to which he had access from his cottage by a short way over his own land, and a railway company, under statutory powers, lowered the highway seven feet, leaving the owner's land and cottage on the edge of a cutting of that height, obliging him to use a ladder to obtain access from the highway to the passage leading to his cottage, it was held that this was an injury for which compensation must be made under the Railway Clauses Consolidation Act, 1845 (*u*). Where by reason of the obstruction of a highway during the construction of a railway across it, the access of an adjoining owner to houses and shops was, notwithstanding the substitution of a deviation road and bridge, rendered less convenient to the occupiers and their value greatly diminished, it was held that the owner was entitled to compensation (*x*). Where under statutory powers a company erected an

(*q*) *Chaplin v. Westminster Corpn.*, [1901] 2 Ch. 329; 26 Digest 333, 649.

(*r*) *Vanderpant v. Mayfair Hotel Co.*, [1930] 1 Ch. 138; Digest (Supp.).

(*s*) *Rose v. Groves* (1843), 5 Man. & Gr. 613; 44 Digest 88, 700; *Fritz v. Hobson* (1880), 14 Ch. D. 542; 26 Digest 336, 664.

(*t*) *Moore v. Great Southern and Western Rail. Co.* (1858), 10 Ir. C. L. Rep. 46; 11 Digest 136, *w*.

(*u*) *Ibid.*

(*x*) *Chamberlain v. West End of London and Crystal Palace Rail. Co.* (1863), B. & S. 617; 11 Digest 140, 263.

embankment on a highway and narrowed it from fifty to thirty-three feet, an owner of adjoining premises which, it was found, were materially diminished in value for selling or letting and the access of light and air was obstructed, was held to be entitled to compensation for a permanent injury to his land (*a*). Where a railway company, under statutory powers, cut off entirely one of two parallel accesses on the level from two sides of a spinning mill ninety yards from an important main thoroughfare in Glasgow, and substituted a deviated road over a bridge with steep gradients, diverting the other access and making it less convenient, the owners were held to be entitled to compensation for the diminished value of their premises by reason of both matters (*b*). Where a highway subsides and is damaged through mining operations, the highway authority may recover the cost of restoring and repairing the highway (*c*), but they may only recover what it would cost to make the highway equally commodious and not what it would cost to restore it to its original level (*d*). But if they do restore it to its original level, the effect of which is to interfere with the right of access of an adjoining owner, the latter is not entitled to an injunction to restrain them (*e*). [960]

Remedies for Interference.—It is not proposed in this article to deal with the ordinary remedy for public nuisances by indictment in the name of the Crown, as to which see titles HIGHWAY NUISANCES; NUISANCES. A private person who has sustained particular damage from a public nuisance may maintain an action for an injunction (*f*), and the Attorney-General need not be joined as a party (*g*). There are two remedies open to the person aggrieved, namely (1) abatement, and (2) action.

Abatement is probably only rarely available. Anyone who is actually obstructed in the exercise of his rights as to the highway has a common law right to abate the obstruction by removing it (*h*). But this is only justifiable where necessary to the exercise of the right, and if it is possible to avoid the nuisance by taking any other course with reasonable convenience, he cannot justify abating the obstruction (*i*).

As regards action, this also may be excluded, as for instance where the act complained of was done under statutory powers and provision for compensation is made, in which case the party aggrieved can only claim compensation (*k*). But the statutory powers must be strictly complied with, and any excess in their exercise may give rise to an action even though compensation for damage is provided by the Act (*l*). [961]

Restriction of Ribbon Development. Means of Access.—The right of adjoining owners to construction of means of access from the highway to any part of their adjoining lands has, however, been further restricted by the Restriction of Ribbon Development Act, 1935. That

(*a*) *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 26 Digest 455, 1710.

(*b*) *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; 11 Digest 140, 259.

(*c*) *Benfieldside Local Board v. Consett Iron Co.* (1877), 3 Exch. D. 54; 26 Digest 455, 1715.

(*d*) *Lodge Holes Colliery Co. v. Wednesbury Corpn.*, [1908] A. C. 323; 26 Digest 331, 630.

(*e*) *Atherton v. Cheshire County Council* (1895), 60 J. P. 6; 26 Digest 334, 655.

(*f*) *Viner Abr. Chimin Common*, D. 2; Co. Litt., 56a.

(*g*) *Cook v. Bath Corpn.* (1868), L. R. 6 Eq. 177; 26 Digest 453, 1683; *Spencer v. London and Birmingham Rail. Co.* (1836), 8 Sim. 193; 26 Digest 453, 1687.

(*h*) *Chichester v. Lethbridge* (1738), Willes, 71; 26 Digest 453, 1689.

(*i*) *Dimes v. Peley* (1850), 15 Q. B. 276; 26 Digest 448, 1639.

(*k*) See e.g. *Chaplin v. Westminster Corpn.*, [1901] 2 Ch. 329; 26 Digest 333, 649.

(*l*) *R. v. Scott* (1842), 3 Q. B. 543; 26 Digest 445, 1626.

Act makes it unlawful, without the consent (*m*) of the highway authority, to construct, form or lay out any means of access (*n*) to or from a road (*o*) which is :

- (1) a road in respect of which a " standard width " has been adopted by the highway authority (*p*) ; or
- (2) a road which on May 17, 1935, was a classified road (*q*) ; or
- (3) a road to which the foregoing restrictions do not apply, but in respect of which the highway authority by resolution adopt the provisions of sect. 2 of the Act (*r*).

If a standard width is adopted in respect of a road which also comes within the descriptions (2) or (3) above, the restrictions imposed are those of sect. 1 and, so long as these are in force, the restrictions otherwise imposed by sect. 2 are of no effect (*s*).

The restrictions ordinarily apply to land forming part of a burial ground (*t*), but do not apply to the construction or otherwise of means of access to any land, where such works were (1) begun before the date on which the restrictions were first published, (2) carried out in execution of a contract made before that date otherwise than in contemplation of such restrictions, or (3) carried out in accordance with any permission granted before that date by a planning authority (*a*). For this purpose the restrictions are deemed to have been first published (i.) where a standard width is adopted, on the date on which notice of the passing of the adopting resolution is first advertised (*b*) ; (ii.) in the case of classified roads, on August 2, 1935 ; and (iii.) where the provisions of sect. 2 (2) are adopted in respect of a road, on the date on which the Minister's approval of the adopting resolution is first advertised (*c*).

The restrictions may be removed by order of the M. of T., who must first be satisfied, on the application of a highway authority or the council of a non-county borough or district, that by reason of other statutory provisions or those of an order, scheme or resolution made thereunder, any such restrictions have been rendered unnecessary as

(*m*) As to the grant of such consents, see *infra*.

(*n*) This includes any means of access, whether private or public, for vehicles or for foot passengers, and includes any street (Restriction of Ribbon Development Act, 1935, s. 24 (1)).

(*o*) " Road " for this purpose means a highway repairable by the inhabitants at large and includes any part of such a highway and any bridge over which such a highway passes. It also includes land upon which, in accordance with plans approved by the M. of T., a highway authority are for the time being constructing or intending to construct a highway or part of a highway shown in the plans which will be repairable by the inhabitants at large, including any bridge over which such proposed road is intended to pass (Act of 1935, s. 24 (1)).

(*p*) Act of 1935, s. 1, and see *ibid.*, s. 24 (1) ; elaborate provisions must be complied with before a standard width is properly adopted for this purpose (see title RIBBON DEVELOPMENT RESTRICTION).

(*q*) *Ibid.*, s. 2. For definition of " classified road," see s. 24 and title CLASSIFICATION OF ROADS.

(*r*) Act of 1935, s. 2 (2). As to such resolutions and their confirmation, see title RIBBON DEVELOPMENT RESTRICTION.

(*s*) *Ibid.*, s. 2 (4).

(*t*) *Ibid.*, s. 3 (2).

(*a*) *Ibid.*, s. 3 (1). " Planning authorities " are for this purpose the authorities who, in relation to any land subject to a planning scheme or a resolution to prepare or adopt such a scheme, have power to control the development or interim development of that land (Act of 1935, s. 24 (1)). For purposes of s. 3 (1) (*c*) they further include any tribunal or authority to whom an appeal lies from any decision given by such an authority (*ibid.*).

(*b*) As to this advertisement, see Act of 1935, s. 1 (1) and Sched. II., and title RIBBON DEVELOPMENT RESTRICTION.

(*c*) *Ibid.*, s. 3 (1).

regards any road (*d*). The restrictions may, however, be re-imposed by the highway authority at a later date by a resolution made and approved under the Act (*d*). [962]

Consents to Construction.—In general any consent which a highway authority may give to the construction or otherwise of means of access may be given subject to such conditions as they may think fit to impose (*e*). With a view to securing that the exercise of their powers as to the giving of such consents is co-ordinated with the exercise by planning authorities of their powers in relation to planning schemes, the highway authority must (1) consult with any planning authorities concerned, and (2) in making their decision on the application for consent, the highway authority must have regard, whether or not the land affected is subject to a planning scheme, to the need for preserving the amenities of the locality and for securing well-planned development (*e*). This provision appears to lead to a possible request of the highway authority that the planning authority should contribute to compensation payable to an owner whose land is injuriously affected by the refusal of such a consent, but the owner's claim under sect. 9 of the Act arises against the highway authority, and there appears to be no provision for the indemnity of the latter by the planning authority, if the consent is refused at their request. [963]

Consent is not to be unreasonably withheld nor made subject to unreasonable conditions, provided that the means of access is reasonably required for some purpose, and if the purposes are agricultural purposes consent is neither to be withheld nor made subject to any conditions save such as may be necessary for securing that the means of access is used for agricultural purposes only (*f*). Consent must be given or refused within two months, and if after the expiration of that time from an application therefor, specifying the name and address of the applicant and sufficient particulars, no decision has been notified in writing, posted or delivered to the applicant at that address, then (except as may be otherwise agreed in writing between the highway authority and the applicant) the consent will be deemed to have been given without conditions (*g*).

Conditions attached by a highway authority to a consent given by them are binding on, and enforceable by the authority against, every person for the time being having any estate or interest in the land to which they relate, except that where the consent is given on the application of a person with a less interest than that of an owner, conditions requiring the execution or maintenance of any works on the land are binding on and enforceable against the applicant and his successors in the same interest only (*h*). [964]

Appeal.—If an applicant for consent is aggrieved by a decision under sect. 7 of a highway authority, withholding a consent or imposing a condition, he may appeal to the M. of T., who may make such order as he thinks fit and whose decision will be final (*i*). But the Minister must consult any other Government department concerned, and if

(*d*) Act of 1935, s. 12.

(*e*) *Ibid.*, s. 7 (1) (2). If the application is one in respect of which the authority might give consent under either s. 1 or s. 2, the land being subject to the restrictions, the application is to be treated as made under both sections unless the applicant requests otherwise (*ibid.*, s. 8 (1)).

(*f*) *Ibid.*, s. 7 (1), proviso (*a*). See also definitions of "agriculture" and "agricultural" in s. 24 (1).

(*g*) *Ibid.*, s. 7 (5).

(*h*) *Ibid.*, s. 7 (3).

(*i*) *Ibid.*, s. 7 (4).

either the highway authority or the applicant so require, he must direct a public local inquiry to be held on the appeal. In giving his decision, the Minister must publish a summary of the facts as found by him and of his reasons for the decision (*k*). [965]

Fencing.—Where restrictions are in force, the highway authority may under sect. 4 erect and maintain fences or posts for the purpose of preventing access to the road except at such places as are permitted by them. Fences or posts may not, however, be erected or maintained so as to interfere with any fence or gate required for the purposes of agriculture, or so as to obstruct any public right of way, or any means of access exempt under sect. 3 (1) of the Act (*l*), or constructed, formed or laid out either before the date on which the restrictions came into force or, with the consent of the highway authority, on or after that date (*m*). [966]

Contraventions.—By sect. 11 a contravention of the Act involves a maximum fine of £50, recoverable summarily. See title RIBBON DEVELOPMENT RESTRICTION. [967]

Compensation.—Provision is made by sect. 9 of the Act for the payment by the highway authority of compensation to a person whose estate or interest in land is injuriously affected by the imposition of restrictions (*n*). See titles COMPENSATION FOR TOWN PLANNING; RIBBON DEVELOPMENT RESTRICTION. [968]

3. RIGHTS OF PERSONS INJURED UPON HIGHWAY

In general no action for damages will lie against a highway authority at the suit of a person who has suffered injury through mere non-feasance of the authority in the discharge of their duties (*o*). In order to succeed in an action the person injured must show some act amounting to positive misfeasance as opposed to mere non-feasance (*p*). This doctrine applies only to a highway authority, and not to a sanitary authority; for that reason where a particular authority acts in both capacities it may become a matter of importance to show in which capacity they are being sued. In *Papworth v. Battersea Corporation* (*q*), a plaintiff sought to recover damages for personal injuries occasioned through falling off her bicycle owing to the defective condition of a gully in a road in a metropolitan borough, the council of which were both highway authority and sewer authority. The jury found negligence against the defendants in both capacities, but there was no evidence before them as to the capacity in which the defendants controlled the gully, and no question was left to them as to whether the defendants knew or ought to have known of the defect in the gully. It was held that there must be a new trial, for if the council were responsible for the gully as a road authority only, they would not be liable for mere non-feasance; if it should be found that the defendants were responsible for the gully as sewer authority, it ought to be determined, in order to ascertain whether there was actionable negligence, whether

(*k*) Act of 1935, s. 7 (4). (*l*) See *ante*, p. 426. (*m*) Act of 1935, s. 4.

(*n*) Loss of access may be an injurious affection if the injury suffered would at common law have afforded a right of action (*Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 11 Digest 142, 272; *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 11 Digest 141, 270).

(*o*) *Russell v. Men of Devon* (1788), 2 Term Rep. 667; 26 Digest 587, 2780.

(*p*) *Cowley v. Newmarket Local Board*, [1892] A. C. 345; 26 Digest 400, 1251.

(*q*) [1915] 1 K. B. 392; 26 Digest 398, 1239.

the defect was known, or with reasonable diligence would have been known, to the council.

The reason for the rule was that the predecessors of modern highway authorities were not liable for mere non-feasance, either in the case of the inhabitants at large (*r*), or the county surveyor in respect of a county bridge (*s*), or the parish surveyor of highways (*t*), and a transfer to a public authority of the obligation to repair does not of itself create the liability (*u*). The only exceptions to this rule have been where the statute transferring the obligation has created a liability for non-feasance. In *Hartnall v. Ryde Commissioners* (*x*) improvement commissioners in the borough of Ryde were held responsible for non-feasance under the terms of a local improvement Act, and although this decision has been doubted, it has never been overruled. On the other hand in *Maguire v. Liverpool Corporation* (*y*) the provisions of a local improvement Act, which transferred highway duties to the corporation and rendered them liable to indictment for want of sufficient repair, were held not to create a civil liability for non-feasance. [969]

But a highway authority are liable as such for misfeasance, and will be liable, in the absence of contributory negligence, to a passenger on the highway for injuries caused by their misfeasance. The distinction was neatly indicated by Lord RUSSELL, C.J., in *Tregellas v. L.C.C.* (*a*). In that case a passenger on the highway suffered personal injuries through the neglect of the council's duty to lop the branches of trees in Victoria Park which were overhanging the road. It was held that the council were not liable, this neglect to lop being mere non-feasance, but "if the servants of the L.C.C. had in pursuance of their duty lopped the trees so as to prevent them from being a nuisance, and in the course of doing so had negligently let a branch fall on a passer-by and so caused an injury, then that would have been a misfeasance and the L.C.C. would have been liable." Any person who interferes, however lawfully, with the ordinary structure and normal condition of a highway, is responsible as for a misfeasance until it is restored to its proper and normal condition so that it can properly and without undue risk be traversed by the public (*b*).

A full review of the very large number of decided cases on what are respectively non-feasance and misfeasance is beyond the scope of this title (*c*). But a highway authority have been held liable where they have pulled down and failed to replace a fence which protected passengers from a dangerous ditch (*d*); where they erected a fountain on the highway and have not repaired it so as to prevent injury by a fall of stone (*e*); where they had erected a post in the middle of the entrance

(*r*) *Russell v. Men of Devon* (1788), 2 Term Rep. 667; 26 Digest 587, 2780.

(*s*) *M'Kinnon v. Penson* (1854), 9 Exch. 609; 26 Digest 588, 2782.

(*t*) *Young v. Davis* (1862), 7 H. & N. 760; affirmed by Ex. Ch. (1863), 2 H. & C. 197; 26 Digest 398, 1241.

(*u*) Per Lord HOBHOUSE in *Pictou Municipality v. Geldert*, [1893] A. C. 524, a p. 527; 26 Digest 400, 1252.

(*x*) (1863), 4 B. & S. 361; 26 Digest 399, 1242.

(*y*) [1905] 1 K. B. 767, C. A.; 26 Digest 400, 1255.

(*a*) (1897), 14 T. L. R. 55; 26 Digest 403, 1264.

(*b*) *Shoreditch Corp'n. v. Bull* (1904), 68 J. P. 415; 26 Digest 412, 1320.

(*c*) For a full treatment dealing with all the authorities, see Pratt v. McKenzie, Law of Highways (18th ed.), pp. 409—19; and see title MISFEASANCE AND NON FEASANCE.

(*d*) *Whyler v. Bingham R.D.C.*, [1901] 1 K. B. 45, C. A.; 26 Digest 389, 1168.

Cf. *Priest v. Manchester Corp'n.* (1915), 84 L. J. (K. B.) 1734; 26 Digest 445, 1622; *McClelland v. Manchester Corp'n.*, [1912] 1 K. B. 118; 26 Digest 404, 1270.

(*e*) *McLoughlin v. Warrington Corp'n.* (1910), 75 J. P. 57, C. A.; 36 Digest 51, 318.

to a footpath to prevent cattle straying on it, and had allowed an adjacent street lamp to be unlighted (*f*); where their servants, or other persons for whom they were responsible, had left heaps of stones or materials upon a highway without guarding or lighting them (*g*), or have broken up a highway for repairs and have not guarded or lighted it during the work (*h*), or have not properly restored the highway after the work has been concluded (*i*), or have caused an accident by negligence in executing the work (*k*). They are not responsible where a house owner, in response to a notice from them, lays a drain in a highway and fills in the trench carelessly (*l*), nor where damage caused by a flow of water, though perhaps aggravated by work done by them, was really due to a cause beyond their control and which they were not negligent in failing to foresee (*m*).

A passenger may be debarred from recovering damages for injury caused to him even through misfeasance, if he is guilty of such contributory negligence as to exclude the prior misfeasance of the highway authority as the proximate cause of the injury, though it may have been an essential element of the facts. The question of contributory negligence is again outside the scope of this article, and reference should be made to Halsbury's Laws of England, title "Negligence." [970]

4. LONDON

The general principles to which allusion has been made apply in London as elsewhere in England and Wales. There seems to be no enactment in force in London similar to sect. 18 of the P.H.A. (Amendment) Act, 1907 (*n*). The Restriction of Ribbon Development Act, 1935, does not extend to London, save insofar as sect. 68 of the P.H.A., 1925 (*o*), as to parking places, as amended by the Act of 1935, and sect. 17 of the Act of 1935, as to the provision of means of entrance to and egress from buildings, may be extended to London by order of the M. of H. under sect. 20 of the Act.

See also title LONDON ROADS AND TRAFFIC. [971]

(*f*) *Lamley v. East Retford Corpn.* (1891), 55 J. P. 133, C. A.; 26 Digest 390, 1171.
 (*g*) *Foreman v. Canterbury Corpn.* (1871), L. R. 6 Q. B. 214; 26 Digest 408, 1294; *Penny v. Wimbledon U.D.C.*, [1899] 2 Q. B. 72; 26 Digest 410, 1308; *Tucker v. Axbridge Highway Board* (1888), 53 J. P. 87; 26 Digest 409, 1296; *Gould v. Birkenhead Corpn.* (1909), 74 J. P. 105; 26 Digest 409, 1295; *Donaldson v. Woolwich Corpn.* (1911), 75 J. P. Jo. 27, where the lights were misleading; *Brown v. Lambeth Borough Council* (1915), 32 T. L. R. 61; 26 Digest 515, 2188; *Baldock v. Westminster City Council* (1918), 88 L. J. (K. B.) 502, C. A.; 26 Digest 515, 2189; *McClelland v. Manchester Corpn.*, [1912] 1 K. B. 118; 26 Digest 404, 1270.

(*h*) *Pendlebury v. Greenhalgh* (1875), 1 Q. B. D. 36, C. A.; 26 Digest 410, 1303.

(*i*) *Hill v. Tottenham U.D.C.* (1898), 79 L. T. 495; 26 Digest 404, 1268; *Cox v. Paddington Vestry* (1891), 64 L. T. 566; 26 Digest 411, 1315; *Shoreditch Corpn. v. Bull* (1904), 68 J. P. 415; 26 Digest 412, 1320; *Smith (James) & Co. v. West Derby Local Board* (1878), 3 C. P. D. 423; 26 Digest 411, 1317; *Thompson v. Bradford Corpn. and Tinsley*, [1915] 3 K. B. 13; 26 Digest 406, 1278.

(*k*) *Hardaker v. Idle District Council*, [1896] 1 Q. B. 335, C. A.; 25 Digest 480, 62; *Scott v. Manchester Corpn.* (1857), 2 H. & N. 204; 25 Digest 482, 73; *Torrance v. Ilford U.D.C.* (1909), 73 J. P. 225, C. A.; 26 Digest 405, 1273; *Parkinson v. Yorkshire (West Riding) County Council* (1922), 20 L. G. R. 308; 26 Digest 409, 1298.

(*l*) *Steel v. Dartford Local Board* (1891), 60 L. J. (Q. B.) 256, C. A.; 26 Digest 399, 1249.

(*m*) *Ely Brewery Co. v. Pontypridd U.D.C.* (1903), 68 J. P. 3; 26 Digest 407, 1287.

(*n*) See *ante*, p. 422.

(*o*) 13 Statutes 1145.

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